# In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-82

JOSE M. ALONSO GARCIA, ET AL.,
PETITIONERS,

*v.*

ADALBERT FRIESECKE AND BRITISH MARINE MUTUAL INSURANCE ASSOCIATION ET AL.,
RESPONDENTS.

*v.*

SEA LAND SERVICE, INC., ET AL.,
RESPONDENTS.

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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RESPONDENTS,

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JOSE A. MELENDEZ FLORES,
PETITIONER,
*v.*
CORPORACION RAYMOND, S. A., et al.,
RESPONDENTS.



## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered in this case on April 18, 1979.

### Opinions Below

The unreported opinion of the United States District Court for the District of Puerto Rico, entered *sub nom. Francisco Garcia Serrano* v. *Gulf Atlantic Towing Corp., et al.* v. *Enterprises Shipping Co., Inc.* on May 9, 1978 in six consolidated cases is set forth in Appendix B at p. 39. The opinion of the Court of Appeals for the First Circuit is not yet reported and is set forth in Appendix A at p. 18.

### Jurisdiction

The judgment of the Court of Appeals for the First Circuit was entered on April 18, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1).

### Questions Presented

1. May Congress constitutionally exclude United States citizens in Puerto Rico from the benefits of the Longshoremen's and Harbor Workers' Act, without stating a rational basis for the exclusion?

   a. Did Congress intend such exclusion?
   b. If the exclusion was in fact intended, what over-

riding national interest justifies the discrimination?

2. Did Congress grant to Puerto Rico by the Second Organic Act (Jones Act, 1917) the power to render federal law inapplicable in Puerto Rico?

a. If Congress did grant such power, why was it limited solely to injuries to maritime workers?
b. Does Congressional power over territories authorize otherwise impermissible discrimination?

## Constitutional and Statutory Provisions Involved

The relevant constitutional and statutory provisions are as follows and are set out in Appendix C, pp. 45, *infra:*

Constitutional provisions;

U.S. Const. art III, § 2
U.S. Const. art. IV, § 3, cl. 2
U.S. Const. art. VI, cl. 2
U.S. Const. amend. V.

Statutes;

33 U.S.C. § 902
33 U.S.C. § 903
33 U.S.C. § 905
33 U.S.C. § 932
48 U.S.C. § 734
48 U.S.C. § 737
48 U.S.C. § 747
48 U.S.C. § 749
48 U.S.C. § 793b
48 U.S.C. § 821



Executive orders;

Exec. Order No. 10005, 13 Fed. Reg. 5854 (1948), *reprinted in* 48 U.S.C.A. § 793b.

## Statement of the Case

This petition includes six cases selected as representative of more than seventy cases pending before the United States District Court for the District of Puerto Rico. (App. p. 39). The actions were brought to recover damages from shipowners and operators for injuries suffered by longshoremen while engaged in maritime employment on the navigable waters of the United States in Puerto Rico.

In each of the first five cases consolidated herein the basis for federal jurisdiction in the District Court was diversity of citizenship and jurisdictional amount. 28 U.S.C. § 1332. In the last of the consolidated cases the basis for federal jurisdiction in the District Court was the admiralty and maritime jurisdiction. 28 U.S.C. § 1333.

Respondents moved for summary judgment in each case on the ground that under the law of Puerto Rico they were statutory employers of the petitioners and immune from third-party claims. The motions were based on the applicability of the law of Puerto Rico under the doctrine of *Guerrido* v. *Alcoa Steamship Co.,* 234 F.2d 349 (1st Cir. 1956). Petitioners contended that federal, not local, law determinel their rights, and that their exclusion from federal legislation enacted for the protection of maritime workers would constitute an invidious and unconstitutional discrimination.

The District Court, sitting en banc, granted summary judgment dismissing the complaints. Although believing that substantial grounds existed to support petitioners' contentions, the District Court felt bound by the *Guerrido*

decision. (App. pp. 43, 44). The constitutional issues were not reached by the District Court. (App. pp. 43, 44).

Appeal was taken and the Director, Office of Workers' Compensation Programs, United States Department of Labor was granted leave to file a brief amicus curiae. That brief supported petitioners' contention that the Longshoremen's and Harbor Workers' Act, 33 U.S.C. §§ 901-950, is applicable to Puerto Rico. The Court of Appeals declined to reconsider its prior holding that local law had supplanted federal law with respect to maritime workers in Puerto Rico, and rejected petitioners' constitutional arguments.

The decision of the Court of Appeals in these cases affects all maritime workers similarly situated and will, unless modified, preclude those injured in Puerto Rico from pursuing the rights extended to them by Congress as members of a protected class.

## Reasons for the Allowance of the Writ

### I. The Court of Appeals for the First Circuit Has Decided a Federal Question in a Way in Conflict With Applicable Decisions of This Court, and With Expressed Congressional Intent, and With Other Decisions of the Same Court of Appeals.

The decision below ratifies a prior holding in *Guerrido* v. *Alcoa Steamship Co.*, 234 F.2d 349 (1st Cir. 1956), that the Longshoremen's and Harbor Workers' Act does not apply to Puerto Rico. The basis of that holding was the proviso in section 3(a) of that Act, Mar. 4, 1927, c. 509, § 3, 44 Stat. 1426. *Guerrido* v. *Alcoa Steamship Co.*, 234 F.2d at 356. The Court of Appeals ruled there that if compensation could validly be provided under "state" law, then the federal law was not applicable. The term "state" was held to include Puerto Rico since by definition it included a "territory".



This holding was of dubious validity at that time in view of the language in *Parker* v. *Motor Boat Sales*, 314 U.S. 244 (1941).

> We believe that there is only one interpretation of the proviso in Section 3(a) which would accord with the aim of Congress; the field in which a state may not validly provide for compensation must be taken, for the purposes of the Act, as the same field which the Jensen line of decision excluded from state compensation laws.

314 U.S. at 250.

If Puerto Rico was included in the proviso as a state, then the doctrine of *Southern Pacific Company* v. *Jensen*, 244 U.S. 205 (1917), barred application of Puerto Rican law to maritime workers. If Puerto Rico was not a "state" included in the *Jensen* line of decision, then the proviso of Section 3(a) was not applicable to it. The conclusion in *Guerrido*, 234 F.2d at 356, that by the proviso "Congress intended to prevent its new compensation act from superseding the existing Puerto Rican compensation act" then is invalid and the federal act applies under the Supremacy Clause. U.S. Const. art. VI, cl. 2.

All doubt as to the correct construction was eliminated by *Calbeck* v. *Travelers Insurance Co.*, 370 U.S. 114 (1962). This Court there ruled that:

> The Court of Appeals' interpretation of Section 3(a) would, if correct, have the effect of excepting from the Act's coverage not only the injuries suffered by employees while engaged in ship construction but also any other injuries—even though incurred on navi-

> gable waters and so within the reach of Congress—for which a state law could, constitutionally, provide compensation. But the Court of Appeals' interpretation is incorrect. The history of the Act, and of Section 3(a) in particular contravenes it; and our decisions construing Section 3(a) have rejected it. Our conclusion is that Congress invoked its constitutional power so as to provide compensation for all injuries sustained by employees on navigable waters whether or not a particular injury might also have been within the constitutional reach of a state workmen's compensation law.

370 U.S. at 116-117.

The interpretation of section 3(a) held incorrect in *Calbeck* is the same interpretation given to that section in *Guerrido*. Nevertheless the Court of Appeals now ratifies its former holding, contending that *Calbeck* does not affect that holding. (App. p. 32). The position now adopted is that "as an original matter, we would be hard pressed to find Puerto Rico within the aim of the Act". (App. p. 34). The inconsistency with *Guerrido* is clear. There the same court found Puerto Rico, a territory, included in the definition of "state" in section 2(8). 234 F.2d at 356.

The effort to fortify its conclusion with additional considerations leads the Court of Appeals into further inconsistencies. Referring to the fact that the definitions in section 2 of the Longshoremen's Act were left unchanged by the 1972 amendments, Pub.L. No. 92-576, 86 Stat. 1251, the Court notes that "[t]here is no indication in the legislative history or otherwise that Congress intended to depart from our longstanding interpretation that the Act does not extend to longshoremen injured on Puerto Rican navigable waters." (App. p. 34). The failure to amend



the definition of "state" in section 2(8) under this premise continued the inclusion of Puerto Rico in that definition. The exclusion of Puerto Rico from the coverage of the Act was based on the proviso of section 3(a). That proviso was eliminated by the 1972 amendments. 33 U.S.C. § 903(a). Contrary to the statement of the Court of Appeals, Congress did act precisely in the manner that eliminated the basis of the exclusion of Puerto Rico from coverage. Since Congress is presumed to be aware of and to adopt the judicial interpretation of a statute when it re-enacts the statute without change, (App. p. 34) then the deletion of the proviso without changing the definition of "state" manifests intent to extend coverage to Puerto Rico. Congress had long ago expressed its intent that "[a]ll laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, except so far as the same may be locally inapplicable, shall apply to said island and waters and to its adjacent islands and waters." 48 U.S.C. § 749.

The opinion below explains the elimination of the proviso in section 3(a) of the Longshoremen's Act with the following language:

> The deletion of this clause was required to implement the Congressional purpose to remedy the "disparity in benefits payable for death or disability for the same type of injury depending on which side of the water's edge and in which State the accident occurs." H.R. Rep. No. 92-1441, 92d Cong., 2d Sess. 10 (1972); *reprinted in* U.S. Code Cong. & Ad. News 4698, 4707.

(App. p. 32). Congress was concerned also with inadequacy and noted that "[t]o make matters worse, most State Workmen's Compensation laws provide benefits

which are inadequate." H.R. Rep. No. 92-1441, 92d Cong. 2d Sess. 10 (1972); *reprinted in* U.S. Code Cong. & Ad. News 4698, 4707. The report lists the maximum limits on the compensation payable for permanent total disability in some maritime states, *id.* The list does not reach down to Puerto Rico with a maximum of less than $30.00 per week. P.R. Laws Ann. tit. 11, § 3 (Equity, 1978, p. 41). Congress was fully aware of Puerto Rico since the same report makes reference thereto under the caption "Student Benefits". 1972 U.S. Code Cong. & Ad. News at 4706. Extension of coverage to Puerto Rico would fulfill another of the Congressional purposes—to supplant inadequate compensation provided by the states, that term already including Puerto Rico. The decision below is inconsistent with this expressed intent.

The reference to "disparity" calls to mind of course the doctrine of uniformity in the admiralty and maritime law. That uniformity as to compensation for injuries suffered benefits not only the claimant, but the shipowner as well. *Moragne* v. *States Marine Lines, Inc.*, 398 U.S. 375, 403-404 (1970). The quotation from the House Report included in the opinion below and copied above refers to "disparity . . . depending on . . . in which State the accident occurs." If elimination of that disparity is the objective, then exclusion of Puerto Rico frustrates the Congressional intent.

The finger in the dike technique with which the Court of Appeals has dealt with the maritime law in and around Puerto Rico has resulted in a maze of inconsistent decisions. That Court recognized early that it was creating a lack of uniformity in the maritime law. *Fonseca* v. *Prann*, 282 F.2d 153, 157 (1st Cir. 1960), *cert. denied* 365 U.S. 860 (1961). The disregard for uniformity has led to illogicality. A longshoreman injured aboard a vessel in Puerto Rican waters enjoyed the protection of the doctrine of unseaworthiness. *Waterman Steamship Corporation* v. *Rodriguez*, 290 F.2d 175 (1st Cir. 1961). The seaman for whose protection the doctrine was fashioned did not, since "Congress has [n]ever taken action to make the general maritime law of unseaworthiness apply in those waters." *Fonseca* v. *Prann*, 282 F.2d at 156-157. But that law does apply there to seamen whose employment is contracted outside Puerto Rico. *Alcoa Steamship Company* v. *Velez*, 376 F.2d 521, 524 (1st Cir. 1967). It also applies to seamen employed in Puerto Rico if the injury fortuitously occurs elsewhere. *Manuel Caceres* v. *San Juan Barge Company*, 520 F.2d 305 (1st Cir. 1975). The Court of Appeals regards "the activities of longshoremen engaged in loading and unloading vessels as essentially a local matter". (App. p. 29). The inconsistency with decisions of this Court and with the view of Congress need not be reemphasized. There is also inconsistency with another decision of the Court of Appeals which ruled that:



> There can be little doubt that a stevedoring contract with a shipowner is maritime in nature and that the breach of an implied warranty to perform services in a workmanlike fasion is governed by federal maritime law, not state law. Moreover, we think that this is just the kind of situation in which a uniform federal admiralty rule is desirable. Since the ship visits many ports its indemnity rights should remain constant.

*Feliciano* v. *Compania Transatlantica Espanola, S.A.*, 411 F.2d 976, 978 (1st Cir. 1969). The teaching of this Court in *Moragne* is that the ship's duties, as well as its rights, should be uniform.

The inconsistencies have grown out of efforts to sustain the *Guerrido* ruling that Puerto Rico enjoys the power to supplant "a rule of maritime law" which Congress has

not made expressly applicable to Puerto Rican waters. 234 F.2d at 355. The question arises how much more express must application be than the action of Congress in 1927 and 1972 with respect to the Longshoremen's Act. The first time around the Court of Appeals found the definition of "state" as including a "territory" to be sufficient. 234 F.2d at 356. Another question arises from the decision in *Caribtow Corp.* v. *Occupational Safety & Health R. Com'n,* 493 F.2d 1064 (1st Cir. 1974), *cert. denied* 419 U.S. 830 (1974), where the Court of Appeals said:

> The fact that the Commonwealth now possesses its own Constitution, and is governed with the consent of its inhabitants, does not establish that it is now so independent of the federal government that it may ignore or nullify national legislation and exert powers in this regard that are denied to the states, each of which also possesses a constitutional and a republican form of government.

493 F.2d at 1066. That case arose out of the death of "[a]n employee of Caribtow, a Puerto Rican corporation, [who] was killed while engaged in trying to move a crawler crane from a barge to a dock in Santurce, Puerto Rico." 493 F.2d at 1065. Puerto Rico has its own legislation dealing with the subject matter. P.R. Laws Ann. tit. 29 §§ 321-352. Why is the doctrine which has caused so many inconsistent decisions limited solely to claims by injured longshoremen and seamen, and to no others, not even to third-party indemnity claims arising from the same facts?

The opinion below makes no reference to Act of Aug. 5, 1947, c. 490, § 6, 61 Stat. 772, *codified in* 48 U.S.C. § 793b, *repealed* Jul. 25, 1952. (App. p. 52). It must be noted that in *Guerrido* the Court of Appeals was interpreting Congressional intent at the time of passage of the Organic



Act of 1917. In 1947 Congress passed specific legislation requiring an executive order to exempt "Puerto Rico from the application of any Federal law, not expressly declared by Congress to be applicable to Puerto Rico, which as contemplated by section 734 of this title is inapplicable by reason of local conditions." Executive Order No. 10005, Oct. 6, 1948, 13 Fed. Reg. 5854, *reprinted in* 48 U.S.C.A. § 793b, established a commission to "make recommendations to the President concerning the exercise of his power under section 49b(3) of the Organic Act of Puerto Rico to exempt Puerto Rico from the application of Federal laws." Congress' view of what it had wrought was diametrically opposed in 1947 to the view of the Court of Appeals in 1956. The establishment of the Commonwealth in 1952 did not affect the continued applicability of federal statutes in Puerto Rico. *Moreno Rios* v. *United States,* 256 F.2d 68, 71-72 (1st Cir. 1958); *N.L.R.B.* v. *Security National Life Insurance Co.,* 494 F.2d 336, 338 (1st Cir. 1974); *United States* v. *Villarin Gerena,* 553 F.2d 723, 726 (1st Cir. 1977). If Congress' statement of its own intent is not to be accepted, some explanation should be given for the enlightenment of all.

References to "local self-determination", "local matters", "local control", "local concern", and "local territorial government", (App. pp. 28, 29) should not be permitted to confuse the issue. The Court of Appeals was construing the Organic Act of Puerto Rico, the Merchant Marine Act of 1920, and the Longshoremen's and Harbor Workers' Act, all federal enactments. The questions presented are federal questions, and the conflicts created are with federal legislative and decisional law.

II. THE COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT, AND HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

In both the District Court and the Court of Appeals petitioners contended that their exclusion from federal legislation directed to the protection of the class of which they are members is constitutionally impermissible. The District Court found it unnecessary to reach the constitutional question (App. p. 43). The Court of Appeals resolved the issue with a speculative finding for which no evidence exists in the record and which conflicts with the Congressional intent in enacting the Longshoremen's Act, and with the declared intent of the 1972 amendments.

The issue is different from that presented in *Califano* v. *Torres,* 435 U.S. 1 (1978), which dealt with a constitutional attack upon a law providing for governmental payments of monetary benefits. Neither the legislation protecting seamen nor that protecting longshoremen provides for governmental payments.

The language of the statutes offers no basis for a finding of intent to exclude maritime workers injured on the navigable waters of the United States in and around Puerto Rico. The Jones (Seamen's) Act extends coverage to "[a]ny seaman," 46 U.S.C. § 688, and the Longshoremen's Act requires "[e]very employer" to secure the payment of compensation thereunder. 33 U.S.C. § 932. The definition of "employer" includes all whose employees are employed in maritime employment upon the navigable waters of the United States, and adjoining areas. 33 U.S.C. § 902(4). The definition of "employee" includes "any person" in the class of which petitioners are clearly members. Were either of the statutes to contain limitations based on race, creed, national original or sex, the invalidity of such limitations would not merit discussion. No such limitations are included. Nor is any other.



The exclusion of workers in Puerto Rico results only from the construction by the Court of Appeals which erects a legal barrier around the navigable waters of the United States in Puerto Rico. Petitioners contend that the barrier creates unconstitutional discrimination.

This discrimination is not limited to different treatment of maritime workers performing their duties in Puerto Rico as compared to those performing their duties elsewhere. Different treatment of workers injured in a single accident in Puerto Rico may result depending upon the place at which their services were contracted. *Alcoa Steamship Company* v. *Velez,* 376 F.2d 521 (1st Cir. 1967).

The curt disposition of the constitutional issue by the Court of Appeals acknowledges that as construed the statutes embody discrimination. An attempt at justification is made on the basis of "the disruption the federal benefits could reasonably be thought to work on the Puerto Rican economy." (App. p. 35). Assuming for the moment that such justification would suffice, the records of these cases are absolutely devoid of any data on which to base the finding. No trials were held. Disposition in the District Court was by summary judgment on the legal issue. Argument of counsel before the Court of Appeals certainly is not the accepted or usual basis for such findings. In *Montalvo* v. *Colon,* 377 F. Supp. 1332 (D. P.R. 1974), the Chief Judge of the Court of Appeals recognized an area of differential treatment for Puerto Rico, but would require a showing of "demonstrably grave damage to the political, social, and economic status" of Puerto Rico. *Id.,* 377 F. Supp. at 1341, n.23. That showing would be difficult, if not

impossible, with respect to an area in which the federal minimum wage now generally prevails. 29 U.S.C. § 206(c).

Any showing of economic justification for the discrimination must necessarily be made in the legislative forum. The question of whether employees shall rely on state or federal compensation is a pure question of legislative policy. *Edwards* v. *Pacific Fruit Express Company,* 390 U.S. 538, 543 (1968). Congress did not ignore this element when considering the 1972 amendments to the Longshoremen's Act:

> It is important to note that adequate workmen's compensation benefits are not only essential to meeting the needs of the injured employee and his family, but, by assuring that the employer bears the cost of unsafe conditions, serves to strengthen the employer's incentive to provide the fullest measure of on-the-job safety.

H.R. Rep. No. 92-1441, 92d Cong., 2d Sess., *reprinted in* [1972] U.S. Code Cong. & Ad. News 4699.

The applicable principles were set out by this Court in *Hampton* v. *Mow Sun Wong,* 426 U.S. 88 (1976). Here as in that case, the rule enforced has its impact on an identifiable class of persons who, entirely apart from the rule itself, are subject to a disadvantage not shared by the remainder of the community in that they do not vote for the authority which promulgated the rule. *Id.,* 426 U.S. at 102. The discrimination here, as there, was not required by the statute but was created by another governmental agency, in this case the Court of Appeals. *Id.,* 426 U.S. at 105. There is, however, a significant difference in the two cases. In the case at bar, the agency responsible for execution of the statute appeared as amicus curiae to oppose the discriminatory exclusion. (App. p. 31).



The discriminatory exclusion as to Puerto Rico was based on the plenary power of Congress over territories. *Guerrido* v. *Alcoa Steamship Co.,* 234 F.2d at 356. The plenary power over aliens was held insufficient to justify discrimination by the federal government in *Hampton* v. *Mow Sun Wong,* 426 U.S. at 101, and by territorial government in *Examining Bd. of Eng., Arch. And Sur.* v. *Flores De Otero,* 426 U.S. 572 (1976). Even as to territories, that plenary power does not permit arbitrary government in violation of constitutional protections. *Reid* v. *Covert,* 354 U.S. 1, 14 (1957).

The speculative justification advanced by the Court of Appeals for the discriminatory exclusion, (App. p. 35), is similar to the second justification in *Examining Bd. of Eng., Arch. And Sur.* v. *Flores De Otero,* 426 U.S. at 605. Even had Congress intended and enacted that exclusion, the means drawn to achieve the end must be necessary and precise. *Id.* Here, instead, the Court of Appeals has imposed a blanket exclusion without supporting data.

## Conclusion

For the foregoing reasons, it is respectfully submitted that this petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX A

# United States Court of Appeals
## For the First Circuit

No. 78-1281

JOSE M. ALONSO GARCIA, ET AL.,
PLAINTIFFS, APPELLANTS,

*v.*

ADALBERT FRIESECKE AND BRITISH MARINE MUTUAL INSURANCE ASSOCIATION,
DEFENDANTS AND THIRD-PARTY PLAINTIFFS, APPELLEES,

*v.*

SEA LAND SERVICE, INC.,
THIRD-PARTY DEFENDANT, APPELLEE.

No. 78-1282

FRANCISCO GARCIA SERRANO AND JOSE M. ALONSO GARCIA, ETC.,
PLAINTIFFS, APPELLANTS,

*v.*

GULF ATLANTIC TRANSPORT CORP., AND CONTINENTAL INSURANCE CO.,
DEFENDANTS AND THIRD-PARTY PLAINTIFFS, APPELLEES,

*v.*

ENTERPRISES SHIPPING CO., INC.,
THIRD-PARTY DEFENDANT, APPELLEE.

No. 78-1283

GREGARIO TORRES MATOS,
PLAINTIFF, APPELLANT,

*v.*

COMPAGNIE GENERALE TRANSATLANTIQUE,
DEFENDANT AND THIRD-PARTY PLAINTIFF, APPELLEE,

*v.*

FRED IMBERT, INC. AND GLENN FALLS INSURANCE COMPANY,
THIRD-PARTY DEFENDANTS, APPELLEES.



No. 78-1284

VIRGINIA MAYSONET, ETC., ET AL.,
PLAINTIFFS, APPELLANTS,

*v.*

AMERICAN EXPORT ISBRANDSTEN LINES,
DEFENDANT AND THIRD-PARTY PLAINTIFF, APPELLEE,

*v.*

SAN JUAN MERCANTILE CORP., ET AL.,
THIRD-PARTY DEFENDANTS, APPELLEES.

No. 78-1292

RAFAEL E. CLAUDIO TORRES,
PLAINTIFF, APPELLANT,

*v.*

SEA LAND SERVICE, INC.,
DEFENDANT, APPELLEE.

No. 78-1297

JOSE A. MELENDEZ FLORES,
PLAINTIFF, APPELLANT,

*v.*

COPORACION RAYMOND, S.A., ET AL.,
DEFENDANTS, APPELLEES.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
[HON. JOSE V. TOLEDO, HON. JUAN R. TORRUELLA, and HON. HERNAN G. PESQUERA, *U.S. District Judges*]

Before COFFIN, *Chief Judge*,
CAMPBELL and BOWNES, *Circuit Judges*.

*Stanley L. Feldstein*, with whom *Feldstein, Gelpi, Hernandez & Castillo*, was on briefs, for appellants.

*Antonio M. Bird, Jr.*, and *Daniel J. Dougherty*, with whom *Bird & Bird, Alberto Santiago Villalonga, Hartzell, Ydrach, Mellado, Santiago & Perez, Jose Antonio Fuste, Jimenez & Fuste*, and

*Kirlin, Campbell & Keating,* were on brief, for defendants, third-party plaintiff, appellees.

*Harry Anduze Montano,* for third-party defendants, appellees.

*Carin Ann Clauss,* Solicitor of Labor, *Laurie M. Streeter,* Associate Solicitor, *Joshua T. Gillelan, II.,* and *Gilbert T. Renaut,* Attorneys, United States Department of Labor, on brief for amicus curiae, Director, Office of Workers' Compensation Programs.

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April 18, 1979

CAMPBELL, *Circuit Judge.* These appeals present the questions whether the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950, applies to Puerto Rico and, if not, whether the Puerto Rico Workmen's Accident Compensation Act, 11 L.P.R.A. § 1 *et seq.,* (hereinafter PRWACA) supersedes plaintiffs' remedies under the general federal maritime law for negligence and unseaworthiness.

Four of the plaintiffs,[1] employees of independent stevedoring contractors retained by defendant shipowners, were injured while performing longshoring work on defendants' vessels which were located upon Puerto Rican navigable waters. Plaintiffs' employers, the independent contractors, were insured in accordance with PRWACA and plaintiffs received benefits thereunder. Plaintiffs then brought suit against defendant shipowners alleging that the negligence of defendants and the unseaworthiness of their vessels were responsible for plaintiffs' injuries. Defendants moved

[1] Two other plaintiffs are parties to these appeals. Plaintiff Claudio Torres, employed by an independent trucker contractor retained by defendant Sea-Land to load, unload, and transfer cargo, was injured ashore on Sea-Land's premises. Plaintiff Melendez Flores, an employee of an independent repairman contractor, was injured while repairing defendant's barge. These six cases were chosen by the district court as representative of a group of cases, numbering in excess of 70, pending before the United States District Court for the District of Puerto Rico, all of which present the same basic issues of law. As the particular factual circumstances of each of the plaintiffs make no difference to the broad issues we decide herein, we need not describe them.



for summary judgment on the ground they were the plaintiffs' statutory employers and immune from suit under § 20 of PRWACA, 11 L.P.R.A. § 21.[2] The district court granted defendants' motions.

We have previously decided that the Longshoremen's Act does not apply to Puerto Rico and that the Puerto Rican legislature may validly enact legislation inconsistent with the general maritime law. *Guerrido* v. *Alcoa Steamship Company,* 234 F.2d 349 (1st Cir. 1956); *Fonseca* v. *Prann,* 282 F.2d 153 (1st Cir. 1960), *cert. denied,* 365 U.S. 860 (1961) (PRWACA preempts seamen's actions, brought against their employers and based on general maritime law, for negligence and unseaworthiness); *Alcoa Steamship Company* v. *Perez Rodriguez,* 376 F.2d 35 (1st Cir.), *cert. denied,* 389 U.S. 905 (1967) (PRWACA forecloses in rem suit based on unseaworthiness by longshoreman against his employer's vessel); *Salas Mojica* v. *Puerto Rico Lighterage Company,* 492 F.2d 904 (1st Cir. 1974) (PRWACA provides exclusive remedy for a worker injured on a tug against his employer, the tug owner). Plaintiffs ask us to reexamine our decision.

The basic principles governing our decisions in Puerto Rican maritime matters were laid down in *Guerrido* v. *Alcoa Steamship Company,* 234 F.2d 349 (1st Cir. 1956). The fact pattern in that case was much the same as here. Plaintiff was injured while working as a longshoreman aboard a vessel discharging cargo at a port in Puerto Rico. An American citizen residing in Puerto Rico, he was an employee of a stevedoring company which had contracted with defendant shipowner to handle the cargo and which

[2] 11 L.P.R.A. § 21 provides in material part:

"When an employer insures his workmen or employees in accordance with this chapter, the right herein established to obtain compensation shall be the only remedy against the employer . . ."

was insured under PRWACA. Plaintiff filed suit in admiralty against the vessel and its owner seeking recovery based on unseaworthiness and negligence. This court held that plaintiff had stated a cause of action under federal maritime law.

We said that "the general rules of maritime law as understood in the United States [had] followed the flag to Puerto Rican waters," *id.* at 354, and were enforceable there with the following qualification: Congress, by the Organic Act of 1917, Pub. L. No. 368, c. 145, 39 Stat. 951, had conferred upon the Puerto Rican legislature "general legislative power concerning Puerto Rican waters" which included "full power to provide compensation for marine workers injured in Puerto Rican waters to the exclusion of the remedies against their employers provided by the American maritime law." *Id.* at 354, 355. Thus, the local legislature could, within a limited sphere,[3] supplant general maritime law by the enactment of legislation inconsistent therewith, although it could not supplant a rule of maritime law which Congress had expressly made applicable to Puerto Rico. We concluded

> "that the rules of the admiralty and maritime law of the United States are presently in force in the navigable waters of the United States in and around the Island of Puerto Rico to the extent that they are not locally inapplicable either because they were not designed to apply to Puerto Rican waters or because they have been rendered inapplicable to these waters by inconsistent Puerto Rican legislation."

*Id.* at 355.

[3] One limitation is set forth in *Alcoa Steamship Company* v. *Velez*, 376 F.2d 521 (1st Cir. 1967). PRWACA may not be applied to and hence does not foreclose the remedies of a seaman who entered into his contract of employment in the continental United States and was injured on Puerto Rican territorial waters while working as a crew member of a continental United States' vessel temporarily in Puerto Rico.



We next inquired whether any Puerto Rican statute supplanted or modified general maritime rules providing for recovery based on unseaworthiness or negligence, and we concluded none did. Indeed, plaintiff's action against defendant shipowner was in our view within the purview of § 31 of PRWACA, 11 L.P.R.A. § 32, which permits suits by injured workmen against parties other than their employers alleged to be responsible for the workmen's injuries, and hence condoned by local law. Finally, we determined that Congress had not made the federal Longshoremen's Act applicable to Puerto Rico. *Id.* at 356.

Thus, longshoremen could recover against their employers under PRWACA and against third-party shipowners under negligence and unseaworthiness principles. *Guerrido*; *Waterman Steamship Corp.* v. *Rodriguez*, 290 F.2d 175 (1st Cir. 1961); *Colon Nunez* v. *Horn-Linie*, 423 F.2d 952 (1st Cir. 1970). This state of affairs continued until very recently. However, on March 31, 1977, the Supreme Court of Puerto Rico, in *Lugo Sanchez* v. *Puerto Rico Water Resources Authority*, Nos. R-76-116, R-76-128 (Puerto Rico 1977), construed § 31 of PRWACA as precluding employee suits in analogous circumstances. If, as the district court has ruled in the instant case, *Lugo Sanchez* must be taken to signal that Puerto Rico's workmen's compensation law forbids negligence and unseaworthiness actions against shipowners, then such actions may no longer be pursued in the Puerto Rico District Court unless either Congress or the Puerto Rico Legislature acts, or unless this court accepts plaintiffs' present invitation to abandon the principles laid down in *Guerrido* regarding the relationship between Puerto Rico and general maritime law, and the non-applicability of the Longshoremen's Act.

The plaintiff in the *Lugo Sanchez* case was an employee of an independent contractor who had contracted with defendant Authority for the construction and maintenance

of several thermoelectric plants. Because a valve in defendant's pipeline needed repair, plaintiff's employer notified defendant Authority to remove all steam from the line. When plaintiff began to disassemble the valve, he was injured by an escaping steam jet. Plaintiff's employer was insured in accordance with PRWACA and plaintiff received compensation thereunder. Plaintiff thereafter sued defendant Authority for negligence under § 31 of PRWACA, 11 L.P.R.A. § 32.[4] The Supreme Court of Puerto Rico held that the Authority was not a third party within the meaning of 11 L.P.R.A. § 32 but was the plaintiff's statutory employer and immune from suit under 11 L.P.R.A. §§20,[5] 21.[6] The court stated that the purpose of that portion of § 20 which provides " ' this provision [of including in his payrolls the wages paid to all workmen and employees] shall not be applicable to employers for whom work is done by an independent contractor who is insured as an employer under the provisions of this Chapter' " was to grant immunity to the statutory employer, the prime contractor.

[4] 11 L.P.R.A. § 32 provides in material part:
"In case where the injury . . . entitling the workman or employee . . . to compensation in accordance with this chapter has been caused under circumstances making a third party responsible for such injury . . . the injured workman or employee . . . may claim and recover damages from the third party responsible for said injury . . . ."

[5] Section 20 provides:
"Every insured employer shall, on reporting his annual payrolls, include in said payrolls the wages paid to all the workmen and employees working for or employed by him, whether by the job or under some person with whom the employer contracted for the job, or under a contractor or independent subcontractor employed or contracted by said employer; and all accounts or taxes collected by the State shall be based on the employer's current payroll in which shall be included the above-mentioned laborers; Provided, That this provision shall not be applicable to employers for whom work is done by an independent contractor who is insured as an employer under the provisions of this chapter."

[6] Section 21 is set out at note 2.



In construing PRWACA to exempt a prime contractor, the statutory employer, from liability when his subcontractor has insured the injured employee, the Puerto Rico Supreme Court followed the interpretation accorded by many other, though not all, jurisdictions to workmen compensation provisions similar to § 20 of the Puerto Rican statute. The object of statutory employer, sometimes called "contractor-under," provisions is to provide the general or prime contractor an incentive to require his subcontractors or independent contractors to carry insurance. If the subcontractor were uninsured and the general had insured the sub's employees, the general clearly would be immune from suit. If, instead, the general requires the sub to carry insurance, his reward should not be loss of exemption from third-party suit. 2A Larson, *Workmen's Compensation,* § 72.31, at 14-55 (1976).

In *Lugo Sanchez,* the Puerto Rico Supreme Court followed our reasoning in *Musick* v. *Puerto Rico Telephone Company,* 357 F.2d 603 (1966), from which we subsequently departed in *Colon Nunez* v. *Horn-Linie,* 423 F.2d 952,[7] that a prime contractor who requires his independent contractors to take out workmen's compensation insurance has "insured" the workmen of the independent contractor and is therefore immune from suit under the exclusive remedy provisions, 11 L.P.R.A. § 21.

We must defer to the Puerto Rico Supreme Court's interpretation of PRWACA. *See Fornaris* v. *Ridge Tool Company,* 400 U.S. 41 (1970); *Bonet* v. *Texas Company,*

[7] In *Colon Nunez* we specifically addressed the applicability of 11 L.P.R.A. §§ 21, 32 to a suit by a longshoreman employed by an insured, independent stevedoring contractor against the shipowner. Based on our understanding of Puerto Rican law we concluded that a prime contractor (the shipowner) was not considered the employer of workers hired by an independent contractor (the stevedore) and hence was a third party within the meaning of § 32 and therefore not immune from suit under § 21. *Lugo Sanchez* terms *Colon Nunez* v. *Horn-Linie* a wrong precedent and indicates our interpretation of PRWACA was incorrect.

308 U.S. 463, 470-71 (1940); *Bonet* v. *Yabucoa Sugar Company,* 306 U.S. 505, 510 (1939); *Alcoa Steamship Company* v. *Perez Rodriguez,* 376 F.2d at 39. Hence, if apart from their erroneous construction of PRWACA, *Guerrido* and its progeny otherwise state the controlling principles, plaintiffs' sole remedy against defendants is compensation benefits under PRWACA. Plaintiffs dispute this. They argue, first, that the Longshoremen's and Harbor Worker's Compensation Act, 33 U.S.C. §§ 901-950, which preserves a remedy in negligence (although not unseaworthiness) against shipowners, 33 U.S.C. §§ 905(b), 933, applies to Puerto Rico; second, that if the Longshoremen's Act does not extend to Puerto Rico, plaintiffs may still recover for negligence and unseaworthiness because Puerto Rico was never empowered to supersede maritime law; and third, that even if PRWACA is controlling, plaintiffs come within exceptions to the statutory employer doctrine, hence *Lugo Sanchez* is not applicable and plaintiffs may pursue their suits under 11 L.P.R.A. § 32.

Our conclusions both that the Longshoremen's Act did not apply to Puerto Rico and that the Puerto Rican legislature was empowered under the Organic Act of 1917 to enact a compensation statute and thereby supersede remedies available under general maritime law, were set against the background of the Supreme Court's decision in *Southern Pacific Company* v. *Jensen,* 244 U.S. 205 (1917), and Congress' response thereto. As a result of *Jensen,* states were precluded from applying their workmen's compensation acts to longshoremen injured in the course of their employment on the state's navigable waters. Congress twice sought to authorize the application of the state acts to said injuries, first in 1917, Pub. L. No. 82, c. 97, 40 Stat. 395, the same year the Organic Act was enacted, and then again in 1922, Pub. L. No. 239, c. 216, 42 Stat. 634. The latter would have rendered state workmen's compensation



the exclusive remedy for the class of maritime workers of which plaintiffs are members, persons other than the master or members of the crew of a vessel. These statutes were declared unconstitutional in *Knickerbocker Ice Company* v. *Stewart,* 253 U.S. 149 (1920), and *Washington* v. *W. C. Dawson & Company,* 264 U.S. 219 (1924).

In both *Guerrido* and *Lastro* v. *New York & Porto Rico S.S. Company,* 2 F.2d 812 (1st Cir. 1924),[8] we indicated that the fact Congress was thwarted in its attempt to authorize the states to apply their compensation acts to injuries occurring on state territorial waters did not indicate Congress intended to withhold from Puerto Rico the power it had sought to confer on the states. The 1917 and 1922 acts reinforced our view "that Congress never intended, by the Organic Act or otherwise, to deprive the Porto[9] Rican Legislature of power to extend Workmen's Compensation Acts to maritime laborers." *Lastra,* 2 F.2d at 815. Nor, as we recognized in *Guerrido* and in *Fonseca* v. *Prann,* 282 F.2d at 155-56, do the constitutional limitations imposed by the *Jensen* line of cases on Congress' power to delegate legislative power to the states in this maritime area prevent Congress, acting under the broad power to legislate for national territories, U.S. Const. art. IV, § 3, cl. 2, from conferring on the government of Puerto Rico power to make its workmen's compensation law applicable to injuries sustained by employees while at work on its territorial waters. With this background in mind we reexamine our former decisions.

Our conclusion that the Puerto Rican legislature has the authority to enact a compensation statute displacing remedies available under the general maritime law was

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[8] *Lastra* was overruled in *Guerrido* to the extent *Lastra* had held that the general maritime law did not extend to Puerto Rico but was otherwise adhered to.

[9] The spelling was changed to "Puerto" by Act May 17, 1932, c. 190, 47 Stat. 158.

based upon §§ 7, 8, and 37 of the Organic Act of Puerto Rico, 39 Stat. 951. These sections, in material part, were re-enacted in the Puerto Rican Federal Relations Act, Pub. L. No. 600, c. 446, § 4, 64 Stat. 319 (1950), and are now codified as 48 U.S.C. §§ 747, 749, and 821.

Section 8 placed

> "the harbor areas and navigable streams and bodies of water and submerged lands underlying the same in and around the island of Porto Rico and the adjacent islands and waters [owned by the United States on March 2, 1917] and not reserved by the United States for public purposes . . . under the control of the government of Porto Rico, to be administered in the same manner and subject to the same limitations as the property enumerated in [§ 7]."

Section 7 provided that the property placed under the control of the government of Puerto Rico was "to be administered for the benefit of the people of Porto Rico" and that "the Legislature of Porto Rico shall have authority, subject to the limitations imposed upon all its acts, to legislate with respect to all such matters as it may deem advisable." Section 37 extended the local legislative authority "to all matters of a legislative character not locally inapplicable." We concluded "that these three sections gave the Puerto Rican Legislature general legislative power concerning Puerto Rican waters," *Guerrido,* 234 F.2d at 354; *Lastra,* 2 F.2d at 813, including the power to supersede inconsistent rules of federal maritime law. *Guerrido* at 355; *see also Fonseca* v. *Prann,* 282 F.2d 153 (1st Cir. 1960).

Plaintiffs argue we construed too broadly the degree of control conferred upon the Puerto Rican legislature by the Organic Act of 1917. We disagree.

The aim of the Organic Act was to give Puerto Rico full power of local self-determination. *Puerto Rico* v. *The Shell Company,* 302 U.S. 253, 261-62 (1937). In keeping with the theory upon which the various territories, including Puerto Rico, have been organized, "that of leaving to the inhabitants all the powers of self-government consistent with the supremacy and supervision of National authority, and with certain fundamental principles established by Congress," *id.* at 260, *quoting Clinton* v. *Englebrecht,* 13 Wall, 434, 441 (1871), the grant of legislative power in respect of local matters contained in § 37 of the Organic Act of 1917 is considered to be "as broad and comprehensive as language [can] make it." *Id.* at 261. The trend towards autonomy in local matters was furthered by the passage of Pub. L. No. 600, 64 Stat. 319 (1950), which authorized the people of Puerto Rico to "organize a government pursuant to a Constitution of their own adoption" and by the establishment of Commonwealth status.

In conformity with this general approach to the interpretation of legislation for the territories, and regarding the activities of longshoremen engaged in loading and unloading vessels as essentially a local matter, we stated that "[o]nly the plainly expressed will of the United States is to prevail against the presumption of local control over matters of local concern." *Lastra,* 2 F.2d at 815. We found no such intent in the Organic Act to deprive the Puerto Rican legislature of the power to extend workmen's compensation to these laborers.

Persuasive reasons are required to convince us to depart from our construction of the Organic Act, now the Puerto Rican Federal Relations Act, 48 U.S.C. § 731b *et seq.,* based as it was on fundamental propositions regarding the allocation of powers between the local territorial government and the federal government. These plaintiffs have not supplied.

In reaching our conclusion in *Guerrido* that the Longshoremen's Act of 1927 did not apply to Puerto Rico, we

referred to § 3(a) of that Act, Pub. L. No. 803, c. 509, § 3(a), 44 Stat. 1426, which provided:

> "Compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and *if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law.* . . ." [Emphasis supplied.]

We then stated,

> "We think that by the language which we have quoted [the language underlined above] Congress intended to prevent its new compensation act from superseding the existing Puerto Rican compensation act with respect to longshoremen, such as the present libellant, who are injured in Puerto Rican waters."

*Guerrido,* 234 F.2d at 356.

In light of the legislative history of the 1927 Act and of Congress' previous efforts to relegate to state compensation statutes the remedy for longshoremen injured on navigable waters within a state's borders, the proviso permitting recovery only when compensation "may not validly be provided by State law" had been interpreted to cover "the same field which the *Jensen* line of decision excluded from state compensation laws." *Parker* v. *Motor Boat Sales,* 314 U.S. 244, 250 (1941); *Davis* v. *Department of Labor,* 317 U.S. 249, 252-53 (1942). The purpose of the Act was not to preempt state legislation but to fill the gap states had been rendered powerless to fill by *Jensen.* Our conclusion in *Guerrido* that the Longshoremen's Act did not apply to Puerto Rico was in accord with the basic approach of the Act—permitting operation of local compensation statutes where not precluded by *Jensen.*



Both plaintiffs and amicus curiae Department of Labor view our holding in *Guerrido* as hinging upon a mutually exclusive interpretation of the "may not validly be provided" clause, *i.e.,* that the Longshoremen's Act applies only where a state (and Puerto Rico) could not validly enact a compensation scheme. They argue this theory of mutual exclusivity was first undermined by *Calbeck* v. *Travelers Insurance Company,* 370 U.S. 114 (1962), decided subsequent to *Guerrido,* and then eliminated by the 1972 amendments to the Act which deleted the "may not validly be provided" clause, with the result that *Guerrido* must fall and the Act must be interpreted to cover Puerto Rico. While the interpretation of § 3(a) has undergone change, *Guerrido* is unaffected.

A limited area in which both state compensation acts and the federal act might operate was recognized in *Calbeck* v. *Travelers Insurance Company.* The plaintiffs therein had been injured while completing construction of vessels afloat upon navigable waters. Subsequent to *Jensen* but prior to the enactment of the Longshoremen's Act, the Supreme Court had held a state compensation act applicable in the same situation as presented by *Calbeck* under the maritime but local exception to *Jensen. Grant Smith-Porter Ship Co.* v. *Rohde,* 257 U.S. 469 (1922). Thus, under the mutually exclusive theory of § 3(a), the plaintiffs in *Calbeck* would not have been eligible for federal benefits. Noting the difficulties engendered by the maritime but local doctrine and the hardship to a plaintiff who guessed incorrectly into which category he fell, the Court interpreted § 3(a) to avoid these problems and stated that "Congress invoked its constitutional power so as to provide compensation for all injuries sustained by employees on navigable waters whether or not a particular injury might also have been within the constitutional reach of a state workmen's compensation law." *Calbeck,* 370 U.S. at 117.

Plaintiffs argue that since their injuries occurred on navigable waters they are covered by the Longshoremen's Act as construed in *Calbeck*. That opinion must be interpreted in, and limited to, its context. The Court construed the Longshoremen's Act with reference to two specific problems confronting Congress in 1927—providing compensation for a category of maritime injuries states could not reach and eliminating the uncertainty in the administration of compensation wrought by the maritime but local doctrine. *Calbeck,* 370 U.S. 119-20. Accordingly, the Court discerned a Congressional intent to provide federal compensation not simply where *Jensen* in fact barred the operation of state statutes, but in every case "where *Jensen* might have seemed to preclude state compensation" *Id.* at 120-21, 125.

Puerto Rico falls in neither of these categories. It has not been subject to the problems stemming from *Jensen* which necessitated both the enactment of the Longshoremen's Act in the first place and the Supreme Court's evolving interpretations thereof. Thus, *Calbeck,* tailored to remedy specific problems not present in Puerto Rico, does not affect our holding in *Guerrido.*

Similarly, plaintiffs take too large a view of the significance of the elimination of the "may not validly be provided" clause by the 1972 amendments to the Longshoremen's Act. The deletion of this clause was required to implement the Congressional purpose to remedy the "disparity in benefits payable for death or disability for the same type of injury depending on which side of the water's edge and in which State the accident occurs." H.R. Rep. No. 92-1441, 92d Cong., 2d Sess. 10 (1972); *reprinted in* U.S. Code Cong. & Ad. News 4698, 4707. The former act extended only to injuries occurring upon the navigable waters. Thus, a longshoreman injured while working on board a ship could recover under the federal act while a



longshoreman injured a few feet away from the ship on a pier was remitted to the state compensation remedy. *Stockman* v. *John T. Clark & Son of Boston,* 539 F.2d 264, 270 (1st Cir. 1976), *cert. denied,* 433 U.S. 908 (1977). It was intended that the fortuity whether injury occurred on land or over water not control the amount of recovery. H.R. No. 92-1441 at 10. Accordingly, coverage was extended shoreward from the water's edge to

> "any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel."

33 U.S.C. § 903(a). As these areas included areas in which there was no question state compensation laws might validly operate, *see,* for example, *Nacirema Operating Company* v. *Johnson,* 396 U.S. 212, 221 (1969) (no coverage under federal act for injuries occurring on a pier affixed to land), elimination of the "may not validly be provided" clause was required lest the extension landward be defeated.

We interpret the 1972 amendments in light of the object they were designed to achieve. The evil of the old act, bifurcated coverage for essentially the same employment, *Stockman* v. *John T. Clark & Son of Boston,* 539 F.2d at 275, never obtained in Puerto Rico where PRWACA provides a uniform remedy for all workmen. We cannot view the elimination of the "may not validly be provided" clause as extending coverage of the act to Puerto Rico.

Plaintiffs also rely on the interaction of 33 U.S.C. § 902(9),[10] which defines United States to include territories, with § 903's coverage provision. *Citing Moreno Rios* v. *United States,* 256 F.2d 68 (1st Cir. 1958), holding the

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[10] Section 903(9) provides:
"The term 'United States' when used in a geographical sense means the several States and Territories and the District of Columbia, including the territorial waters thereof."

Narcotic Drugs Import and Export Act, which defined United States in the same terms as does 33 U.S.C. §902(9), applicable to Puerto Rico, plaintiffs urge that the Longshoremen's Act must similarly apply to Puerto Rico. Analysis is not as simplistic as plaintiffs would have it. The term "territory" does not have a fixed and technical meaning accorded to it in all circumstances, and thus Puerto Rico may be found to be included within one act whose coverage extends to territories of the United States and excluded from another. *Americana of Puerto Rico, Inc.* v. *Kaplus,* 368 F.2d 431, 436 (3d Cir. 1966), *cert. denied,* 386 U.S. 943 (1967). "[W]hether Puerto Rico comes within a given congressional act applicable in terms to a 'territory,' depends upon the character and aim of the act." *Puerto Rico* v. *The Shell Company,* 302 U.S. 253, 258 (1937). We have already noted how both the 1927 Act and the 1972 amendments thereto were in response to specific problems ultimately stemming, as a result of *Jensen,* from the states' inability to apply their compensation statutes to longshoremen injured on state territorial waters, problems which have not afflicted Puerto Rico. Thus, as an original matter, we would be hard pressed to find Puerto Rico within the aim of the Act; but additional considerations pertain.

There is no indication in the legislative history or otherwise that Congress intended to depart from our longstanding interpretation that the Act does not extend to longshoremen injured on Puerto Rican navigable waters. Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change. *Lorillard* v. *Pons,* 434 U.S. 575, 580 (1978); *NLRB* v. *Gullett Gin Company,* 340 U.S. 361, 365-66 (1951); 2A C. Sands, *Statutes and Statutory Construction* § 49.09 (4th ed. 1973). Here, § 902(9) was left unchanged by the 1972 amendments, Pub. L. No. 92-576, 86 Stat. 1251, and § 903



was amended only in the specifics discussed earlier to extend coverage shoreward. Hence, we conclude the Longshoremen's Act does not apply to Puerto Rico.[11]

Plaintiffs argue the exclusion of longshoremen injured upon Puerto Rican navigable waters from the coverage of the Longshoremen's Act constitutes an invidious discrimination in violation of the fifth amendment to the Constitution. Congress, however, need not extend every federal program to Puerto Rico. *See Califano* v. *Torres,* 435 U.S. 1, 3 n.4, 5 n.7 (1977). A rational basis for the exclusion exists in the disruption the federal benefits could reasonably be thought to work on the Puerto Rican economy. *Id.,* 435 U.S. at 5 n.7.

We come then to plaintiffs' third argument, that *Lugo Sanchez* does not govern these cases. First, plaintiffs suggest that because the Administrator of the State Insurance Fund appears as plaintiff in some of these suits, *Lugo Sanchez* might not pertain. Section 32, set out in part at note 4, which authorizes actions by employees against persons other than their employers who may be responsible for the injuries sustained, also provides that the Manager of the State Insurance Fund "may subrogate himself in the right of the workman or employee or his beneficiaries

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[11] Plaintiffs also refer to § 9 of the Organic Act, now 48 U.S.C. § 734, which provides "[t]he statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States . . ." Once we have examined a specific piece of legislation and concluded it does not apply to Puerto Rico, as we have done with the Longshoremen's Act, this section adds nothing further to our analysis. The primary impact of § 734 has been its attestation that Congress, under the terms of the compact with Puerto Rico, has retained the authority to apply federal legislation to Puerto Rico without obtaining Puerto Rico's further assent. *Caribtow Corp.* v. *Occupational Safety and Health Review Commission,* 493 F.2d 1064, 1066 (1st Cir.), *cert. denied,* 419 U.S. 830 (1974); *Moreno Rios* v. *United States,* 256 F.2d 68, 71 (1st Cir. 1958); *Americana of Puerto Rico, Inc.* v. *Kaplus,* 368 F.2d 431 (3d Cir. 1966), *cert. denied,* 386 U.S. 943 (1967).

to institute the same action . . . ." Clearly, the Manager's rights are dependent upon the employee's rights; if the employee's action is barred because the defendant is the employee's statutory employer, so too is the Manager's action barred.

Next, plaintiffs, citing *Velez* v. *Halco Sales, Inc.*, 97 P.R.R. 426 (1969), argue that the existence of an indemnity agreement between defendant shipowners and plaintiffs' employers, the independent stevedoring contractors, (indemnity being premised on the warranty of workmanlike performance under *Ryan Stevedoring Co.* v. *Pan-Atlantic Steamship Corporation*, 350 U.S. 124 (1956) ), works an exception to the statutory employer rule. The employer of the injured workman in the *Halco Sales* case had leased equipment which malfunctioned causing the workman's injuries. The employee sued the owner of the equipment who in turn sought indemnity from the employer under the terms of the lease agreement by which the employer had assumed all responsibility for claims arising out of the use of the equipment. Under the exclusive remedy provision of PRWACA, 11 L.P.R.A. § 21, the employer, of course, would not have been directly liable in tort to his employee. The court held, however, that the employer could waive his immunity by entering into such an indemnity agreement but noted that the agreement could not alter the owner's direct liability to the workman. *Halco Sales*, 97 P.R.R. at 434. Thus, *Halco Sales* in no manner affects the rules of liability pertaining to the primary suit, the suit by the injured employee. If the workman cannot recover because of the statutory employer doctrine, the indemnity issue does not arise.

Third, plaintiffs, invoking *Barrientos* v. *Government of the Capitol*, 97 P.R.R. 539 (1969) which holds that a prime contractor may not escape liability for damages by delegating work "which in the natural course of events entails



some risk unless special precautions are taken" to an independent contractor, argues this primary nondelegable liability rule is an exception to *Lugo Sanchez*. Defendant shipowners, however, are not escaping liability by contracting loading operations to a stevedore; they are subject to compensation liability as set forth in PRWACA.

Next, plaintiffs contend *Lugo Sanchez* does not preclude their suits under the Puerto Rico direct action statute, 26 L.P.R.A. §§ 2001 *et seq.*, against defendants' insurers. Plaintiffs, lacking a right of action against defendants, cannot recover from defendants' insurers. *Ruiz Rodriguez* v. *Litton Industries Leasing Corp.*, 574 F.2d 44 (1st Cir. 1978); *Alonso Garcia* v. *Flores Hermanos Cement Products, Inc.*, No. 0-78-158 (Supreme Court of Puerto Rico, Oct. 24, 1978).

The amicus brief argues that the *Lugo Sanchez* statutory employer doctrine may not pertain to the relationship between a longshoreman and a vessel owner because "it is not at all clear that a shipowner's relationship to a stevedore is that of a 'principal employer' to a 'contractor or independent subcontractor employed or contracted by said employer' within [the meaning of 11 L.P.R.A. § 20] and the *Lugo Sanchez* opinion, so as to make the former the 'statutory employer' of the latter's workers." Brief at 13. Furthermore, the amicus contends that a company (a shipowner) who does not itself have any direct employees covered by the Puerto Rico statute, and that therefore neither files any report of wages nor contributes any premium to the State Insurance Fund under § 20, may not have statutory employer status.

The district court, in granting defendants' motions for summary judgment which were based on the contention that defendants were plaintiffs' statutory employers and hence immune from suit, necessarily resolved this question of Puerto Rican law against plaintiffs. Much deference is

accorded to a district court's construction of the law of the locality in which it sits. *Diaz-Buxo* v. *Trias Monge*, No. 78-1260, slip op. at 7 (1st Cir. Feb. 23, 1979); *Berrios Rivera* v. *British Ropes, Ltd.*, 575 F.2d 966, 970 (1st Cir. 1978); *Graffals Gonzalez* v. *Garcia Santiago*, 550 F.2d 687, 688 (1st Cir. 1977). The fact that the *Lugo Sanchez* decision made no effort to distinguish *Colon Nunez* v. *Horn-Linie*, 423 F.2d 952, which had presented the same factual situation as that present here, but rather flatly stated that *Colon Nunez* "is contrary to the constant doctrine maintained by the case law and the commentators," reinforces our view that the district court did not err in its construction of Puerto Rican law.

Plaintiff Claudio Torres, the trucker's helper (see note 1), also claims he is not within the purview of the statutory employer doctrine. We note that the district court took a broad view of the issues it decided and did not make any specific rulings on the points raised by plaintiff. Proceeding out of an abundance of caution, we think this plaintiff should be given the opportunity to attempt to persuade the district court his claim is distinguishable and we therefore vacate and remand for reconsideration. As to the other cases, we affirm.

*So ordered.*



## APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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CIVIL No. 76-347
and Nos. 76-373, 76-551, 76-645, 76-391, 76-130

FRANCISCO GARCIA SERRANO, et al.,
PLAINTIFFS,
*v.*
GULF ATLANTIC TOWING CORP, et al.,
PARTY PLAINTIFFS,
*v.*
ENTERPRISES SHIPPING CO., INC.,
THIRD PARTY DEFENDANTS.

---

### OPINION AND ORDER

TOLEDO, J.

A motion for summary judgment has been filed in each of the cases enumerated above on the ground that the complaint in each case does not state a claim upon which relief can be granted against the various defendants. These cases were chosen as representative of a group of cases numbering in excess of 70 pending before the several judges of this Court, all of which present the same basic issue of law.

In order to effect economy of time and effort, lead counsel was appointed to coordinate the presentation of briefs and argument on behalf of the plaintiffs, defendants, and third party defendants, respectively. In each case selected for this representative group, a summary of the material facts was tendered on behalf of the plaintiff. The facts essential to resolution of the issues presented are not contested and the Court understands that no objection is raised to presentation in the form of summaries rather

than affidavits. In effect the parties have stipulated these material facts.

The issues presented by the several motions for summary judgment arise from the application of local law to these actions, all of which are brought on behalf of maritime workers, seamen or longshoremen, who have suffered personal injuries while engaged in their employment in the territorial waters of the United States in and around the Commonwealth of Puerto Rico. Since the application of local law to this type of action is unique to Puerto Rico, a brief statement of the development and parameters of the applicable law will aid in the subsequent discussion.

The requirement of uniformity in the general maritime law and the prohibition of variances through application of local law established by *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086 (1917); *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149, 40 S. Ct. 438, 64 L. Ed. 834 (1920); and *State of Washington* v. *Dawson & Co.*, 264 U.S. 219, 44 S. Ct. 302, 68 L. Ed. 753 (1924), have been held not to include Puerto Rico. In its first ruling on the issue, the United States Court of Appeals for the First Circuit held that the Federal Constitution had not been so far extended to Puerto Rico as to bring admiralty jurisdiction here under the substantive admiralty law of the United States. *Lastra* v. *New York & Porto Rico S.S. Co.*, 2 F.2d 812 (1 Cir., 1924), appeal dismissed 269 U.S. 536, 49 S. Ct. 104, 70 L. Ed. 399 (1925). It was not until 1956 that the Court of Appeals again addressed the issue in *Guerrido* v. *Alcoa Steamship Co.*, 234 F.2d 349 (1 Cir., 1956). *Lastra* was found to be in error insofar as in *Guerrido* the Court stated that the rules of the admirality and maritime law of the United States are presently in force in the navigable waters of the United States in and around the Island of Puerto Rico, 234 F.2d at 355. However, the Court of Appeals did not overrule *Lastra*



since it was held that Puerto Rico, contrary to the federated states, could render the Federal law inapplicable to Puerto Rican waters by inconsistent Puerto Rican legislation, except those rules of maritime law which Congress in the exercise of its constitutional power has expressly made applicable to Puerto Rican waters. 234 F.2d at 355. In the *Guerrido* case the Court also found that the Workmen's Accident Compensation Act of Puerto Rico, 11 LPRA Sections 1-42, was such type of inconsistent local legislation rendering the Federal law inapplicable. This holding changed the basis of the claims of the injured maritime workers. Such claims were deemed to arise from the Puerto Rican statute which included the common clause permitting actions by the injured worker against a third party who caused the injuries. 11 LPRA, Section 32.[1]

In 1966, the Court of Appeals held in *Musick* v. *P. R. Tel. Co.*, 357 F.2d 603 (1966), that under the Puerto Rico Workmen's Accident Compensation Act, supra, the employee of an insured independent contractor or subcontractor could not sue the primary contractor.

Four years later, in *Colon Nunez* v. *Horn-Linie*, 423 F.2d 952 (1970), the Court of Appeals held that under the above mentioned Act, the principal contractor was not an "employer" within the meaning of that statute, and thus, not immune from suit. At that time, the Court of Appeals overruled its previous decision in *Musick* and relied on a ruling by the Supreme Court of Puerto Rico in the case of *Gonzalez* v. *Cerveceria Corona, Inc.* (No. R-68-272, Jan. 29, 1969), and read that state court decision as holding that according to state law a third party was not an

[1] The *Guerrido* doctrine has been followed in subsequent decisions. *Fonseca* v. *Prann*, 282 F.2d 153 (1 Cir., 1960), certiorari denied 365 U.S. 860, 81 S. Ct. 826, 5 L. Ed. 2d 822 (1961); *Waterman Steamship Co.* v. *Perez Rodriguez*, 376 F.2d 35 (1 Cir., 1967), certiorari denied 389 U.S. 905, 88 S. Ct. 215 (1967); *Colon Nunez* v. *Horn-Linie*, 423 F.2d 952 (1970).

insured employer. Under this doctrine a progeny of cases were filed before this Court on what at the time seemed a stable doctrine of law.

However, this did not end the tortuous path of these cases. On March 31, 1977, the Supreme Court of Puerto Rico issued its decision in the case of *Lugo Sanchez* v. *P. R. Water Resources Authority,* (Bar Assn. Ref. No. 1977-33). In essence, in that case the Supreme Court held that a person who contracts with an independent contractor is not a third party vis-a-vis the employees of the latter even if the former did not pay the premiums for compensation insurance under the law, 11 LPRA, Section 20, and therefore as a statutory employer this principal contractor or owner enjoys the immunity accorded by the statute, 11 LPRA, Section 21. This is the same interpretation of the Puerto Rican statute adopted by the Court of Appeals in *Musick* v. *Puerto Rico Telephone Co.,* 357 F.2d 603 (1 Cir., 1966), and later overruled in *Colon Nunez,* supra.

In *Lugo-Sanchez,* the Supreme Court stated that the Court of Appeals had mis-interpreted the *Corona* case in deciding *Colon Nunez.* It specifically refused to follow the holding in *Colon Nunez* deeming it to be an erroneous precedent.

As the matter now stands, if the *Lugo Sanchez* holding is to be extended to maritime cases and is applicable to maritime workers under the *Guerrido* doctrine, it appears that plaintiffs can state a claim upon which relief may be granted only by establishing some exception to the general rule. The plaintiffs attempt to meet this burden by contending that *Guerrido* was erroneously decided, and in any case no longer represents valid doctrine. There is some indication that the Court of Appeals itself may be reexamining the *Guerrido* doctrine. In *Colon Nunez,* supra, 423 F.2d at 954, the Court of Appeals said: "Nor



were we aware of the possible relevnce of *Guerrido,* perhaps because *Musick* contained no smell of the sea." The suggestion is implicit that cases with a maritime flavor might stand on a different base than *Musick.* The implication is strengthened by the refusal to apply Puerto Rican law to the indemnity claim against the stevedoring contractor in *Feliciano* v. *Compani Trasatlantica Espanola, S.A.,* 411 F.2d 976 (1 Cir., 1969).

Extensive briefs have been submitted by the parties. It would make this opinion unduly long to review all of the arguments presented. The basic issue raised upon oral argument was whether this Court can decide that the governing law is federal and not local in spite of the teachings of *Guerrido.* Plaintiffs contend that the *Guerrido* doctrine has been eroded by subsequent decisions of the Supreme Court and the Court of Appeals which have released this Court from its binding effect, relying upon *Cox* v. *Dravo Corporation,* 527 F.2d 620 (1975); *Rowe* v. *Peyton,* 383 F.2d 709 (1967), affirmed 391 U.S. 54 (1968); and *Goolsby* v. *Gagnow,* 322 F. Supp. 460 (E.D. Wis., 1971). It is also contended that *Romero Reyes* v. *Marine Enterprises, Inc.,* 494 F.2d 866 (1 Cir., 1974), and *Carrillo* v. *Sameit Westbulk,* 514 F.2d 1214 (1 Cir., 1975), suggest possible reconsideration of the matter by the Court of Appeals. We are of the opinion that the *Guerrido* doctrine should be reconsidered. However, while we believe that there exist substantial grounds to support plaintiffs' contentions, we are bound to follow the Court of Appeals on this matter. We cannot overrule, or otherwise ignore the *Guerrido* decision, but we are uncomfortable in applying it. We are thus compelled to grant defendants' motions for summary judgment. However, we will stay the judgments in these cases, so that plaintiffs may have an opportunity to appeal this decision to the Court of Appeals. We do not reach the constitutional issues raised by plaintiffs that the law

as presently applied to maritime workers in Puerto Rico results in an invidious discrimination depriving them of rights, privileges and immunities secured by the Fifth and Fourteenth Amendments to the Constitution, and also violates the principle of uniformity in the admiralty and maritime law. Esssentially, it is argued that the limitation of constitutional rights on the basis of geographical location or on the basis of territory of the United States being "incorporated into the Union" as exemplified by *Balzac* v. *Porto Rico,* 258 U.S. 298, 42 S. Ct. 343, 66 L. Ed. 627 (1922), can no longer prevail following *Reid* v. *Covert,* 354 U.S. 1, 77 S. Ct. 1222, 1 L. Ed. 2d 1148 (1957); *Ex Bd. of Eng., Arch., and Sur.* v. *Flores de Otero,* 426 U.S. 572, 96 S. Ct. 2264 (1976); and *Hampton* v. *Mow Sun Wong,* 426 U.S. 88 (1976). In view of the present disposition of the motions for summary judgment we need not decide the constitutional issues.

Wherefore, in view of all the above, defendant's motions for summary judgment are granted. The complaints filed will be dismissed. The Clerk will enter judgment accordingly. The execution of the judgment is hereby ordered stayed until plaintiffs pursue an appeal before the Circuit Court.

IT IS SO ORDERED.

San Juan, Puerto Rico, May 9, 1978.

JOSE V. TOLEDO
*Chief,*
*U.S. District Judge*
HERNAN G. PESQUERA
*U.S. District Judge*
JUAN R. TORRUELLA
*U.S. District Judge*

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## APPENDIX C

STATUTES INVOLVED

### UNITED STATES CONSTITUTION

**Article III, § 2, cl. 1**

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;— to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

**Article IV, § 3, cl. 2**

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be co construed as to Prejudice any Claims of the United States, or of any particular State.

**Article VI, cl. 2**

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

**Amendment V**

No person shall be held to answer for a capital, or otherwise infamious crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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UNITED STATES CODE

**33 U.S.C. § 902**

When used in this chapter—

* * *

(3) The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

(4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

* * *



(8) The term "State" includes a Territory and the District of Columbia.

(9) The term "United States" when used in a geographical sense means the several States and Territories and the District of Columbia, including the territorial waters thereof.

* * *

Mar. 4, 1927, c. 509, § 2, 44 Stat. 1424; June 25, 1938, c. 685, § 1, 52 Stat. 1164; Oct. 27, 1972, Pub.L. 92-576, §§ 2(a), (b), 3, 5(b), 15(c), 18(b), 20(c)(1), 86 Stat. 1251, 1253, 1262, 1263, 1265.

**33 U.S.C. § 903(a), Mar. 4, 1927, c. 509, § 3, 44 Stat. 1426**

(a) Compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. No compensation shall be payable in respect of the disability or death of—

(1) A master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

(2) An officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof.

**33 U.S.C. §903(a), Oct. 27, 1972, Pub.L. 92-576, §§2(c), 21, 86 Stat. 1251, 1265**

(a) Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building

way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel). No compensation shall be payable in respect of the disability or death of—

(1) A master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

(2) An officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof.

**33 U.S.C. § 905**

(a) The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under the chapter, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee.

(b) In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 933 of this title, and the employer shall not be liable



to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. If such person was employed by the vessel to provide ship building or repair services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing ship building or repair services to the vessel. The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this chapter.

Mar. 4, 1927, c. 509, § 5, 44 Stat. 1426; Oct. 27, 1972, Pub.L. 92-576, § 18(a), 86 Stat. 1263.

**33 U.S.C. § 932**

(a) Every employer shall secure the payment of compensation under this chapter—

(1) By insuring and keeping insured the payment of such compensation with any stock company or mutual company or association, or with any other person or fund, while such person or fund is authorized (A) under the laws of the United States or of any State, to insure workmen's compensation, and (B) by the Secretary, to insure payment of compensation under this chapter; or

(2) By furnishing satisfactory proof to the Secretary of his financial ability to pay such compensation and receiving an authorization from the Secretary to pay such compensation directly. The Secretary may, as a condition to such authorization, require such

employer to deposit in a depository designated by the Secretary either an indemnity bond or securities (at the option of the employer) of a kind and in an amount determined by the Secretary, and subject to such conditions as the Secretary may prescribe, which shall include authorization to the Secretary in case of default to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this chapter. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer.

* * *

Mar. 4, 1927, c. 509, § 32, 44 Stat. 1439.

**48 U.S.C. § 734.**

The statutory laws of the United States not locally applicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States, except the internal revenue laws other than those contained in the Philippine Trade Act of 1946: *Provided, however,* That after May 1, 1946, all taxes collected under the internal revenue laws of the United States on articles produced in Puerto Rico and transported to the United States, or consumed in the island shall be covered into the Treasury of Puerto Rico. Mar. 2, 1917, c. 145, § 9, 39 Stat. 954; May 17, 1932, c. 190, 47 Stat. 158; Apr. 30, 1946, c. 244, Title V, § 513, 60 Stat. 158.

**48 U.S.C. § 744.**

The coasting trade between Puerto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States. Apr. 12, 1900, c. 191, § 9, 31 Stat. 79; May 17, 1932, c. 190, 47 Stat. 158.



**48 U.S.C. § 747.**

All property which may have been acquired in Puerto Rico by the United States under the cession of Spain in the treaty of peace entered into on the 10th day of December, 1898, in any public bridges, road houses, water powers, highways, unnavigable streams and the beds thereof, subterranean waters, mines or minerals under the surface of private lands, all property which at the time of the cession belonged, under the laws of Spain then in force, to the various harbor works boards of Puerto Rico, all the harbor shores, docks, slips, reclaimed lands, and all public lands and buildings not reserved by the United States for public purposes prior to March 2, 1917, is placed under the control of the government of Puerto Rico, to be administered for the benefit of the people of Puerto Rico; and the Legislature of Puerto Rico shall have authority, subject to the limitations imposed upon all its acts, to legislate with respect to all such matters as it may deem advisable. Mar. 2, 1917, c. 145, § 7, 39 Stat. 954; May 17, 1932, c. 190, 47 Stat. 158.

**48 U.S.C. § 749.**

The harbor areas and navigable streams and bodies of water and submerged lands underlying the same in and around the island of Puerto Rico and the adjacent islands and waters, owned by the United States on March 2, 1917, and not reserved by the United States for public purposes, are placed under the control of the government of Puerto Rico, to be administered in the same manner and subject to the same limitations as the property enumerated in sections 747 and 748 of this title. All laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, except so far as the same may be locally inapplicable, shall apply to

said island and waters and to its adjacent islands and waters. Nothing in this chapter contained shall be construed so as to affect or impair in any manner the terms or conditions of any authorization, permits, or other powers lawfully granted or exercised in or in respect of said waters and submerged lands in and surrounding said island and its adjacent islands by the Secretary of the Army or other authorized officer or agent of the United States prior to March 2, 1917. Mar. 2, 1917, c. 145, § 8, 39 Stat. 954; May 17, 1932, c. 190, 47 Stat. 158; July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501.

**48 U.S.C. § 793b.**

(1) There shall be an administrative officer whose official title shall be the "Coordinator of Federal Agencies in Puerto Rico", who shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and who shall hold office at the pleasure of the President for the purpose of coordinating the administration of all Federal civilian functions and activities in Puerto Rico. He shall receive as compensation for his services an annual salary of $10,000 to be paid out of funds appropriated by Congress for such purpose.

(2) The Coordinator of Federal Agencies shall coordinate the administration of all Federal civilian functions and activities in Puerto Rico. The administrative heads of all Federal civilian agencies in Puerto Rico shall make such reports to the Coordinator of Federal Agencies as he shall require and he shall through the Secretary of the Interior make recommendations to the heads of such agencies with respect to their personnel, functions, and activities in Puerto Rico:[1] the President may, however, by Executive order exempt any Federal agency from making such reports to the Coordinator of Federal Agencies. The Coordinator of Federal Agencies shall make recommendations for the better coordination of the Federal civilian functions and activities and may make recommendations for the elimination or reduction of those which duplicate or conflict with each other or with activities carried on by the Government of Puerto Rico. He shall report through the Secretary of the Interior to the President and to Congress concerning the administration of all Federal civilian functions and activities in Puerto Rico, specifying the recommendations made by him to the Federal agencies and the results of such recommendations. He shall advise the Secretary of the Interior, who shall advise the Bureau of the Budget and the Congress with respect to all appropriation estimates submitted by any civilian department or agency of the Federal Government to be expended in or for the benefit of Puerto Rico. He shall confer with the Governor of Puerto Rico with respect to the correlation of activities of Federal and insular agencies and all plans and programs and other matters of mutual interest.



(3) The President of the United States may, from time to time, after hearing, promulgate Executive orders expressly excepting Puerto Rico from the application of any Federal law, not expressly declared by Congress to be applicable to Puerto Rico, which as contemplated by section 734 of this title is inapplicable by reason of local conditions. The Coordinator of Federal Agencies may, from time to time, make recommendations to the President for such purpose. Any such recommendation shall show the concurrence or dissent of the Governor of Puerto Rico.

(4) The Coordinator of Federal Agencies, in the name of the President of the United States, shall have authority to request from the Governor of Puerto Rico, and the Governor shall furnish to him all such reports pertaining to the affairs, conditions and government of Puerto Rico as the Coordinator of Federal Agencies shall from time to

time request, for transmission to the President through the Secretary of the Interior.

(5) The President of the United States shall prescribe such rules and regulations as may be necessary to carry out the provisions of this section. Mar. 2, 1917, c. 145, § 49b, as added Aug. 5, 1947, c. 490, § 6, 61 Stat. 772, and amended June 24, 1948, c. 610, § 1, 62 Stat. 579.

**48 U.S.C. § 821.**

The legislative authority shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize the municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor; also the power to alter ,amend, modify, or repeal any or all laws and ordinances of every character in force in Puerto Rico or municipality or district thereof on March 2, 1917, insofar as such alteration, amendment, modification, or repeal may be consistent with the provisions of this chapter. Mar. 2, 1917, c. 145, § 37, 39 Stat. 964; May 17, 1932, c. 190, 47 Stat. 158.

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**EXECUTIVE ORDER NO. 10005, 13 Fed. Reg. 5854,**

Oct. 6, 1948, *reprinted in* 48 U.S.C.A. §793b.

ESTABLISHMENT OF PRESIDENT'S ADVISORY COMMISSION ON RELATION OF FEDERAL LAWS TO PUERTO RICO

WHEREAS section 9 of the Organic Act of Puerto Rico, 39 Stat. 954 [section 734 of this title], provides that "the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States"; and

WHEREAS section 49b(3) of the said Act, which was added by section 6 of the act of August 5, 1947, 61 Stat. 772 [this section], provides that "the President of the United States may, from time to time, after hearing, promulgate Executive orders expressly excepting Puerto Rico from the application of any Federal law, not expressly declared by Congress to be applicable to Puerto Rico, which as contemplated by section 9 of this act [section 734 of this title] is inapplicable by reason of local conditions":

NOW, THEREFORE, by virtue of the authority vested in me by the said Organic Act of Puerto Rico, and as President of the United States, it is ordered as follows:

1. There is hereby created a commission to be known as the President's Advisory Commission on the Relation of Federal Laws to Puerto Rico, which shall be composed of nine members to be designated by the President and to serve without compensation.

2. The Commission shall from time to time make recommendations to the President concerning the exercise of his power under Section 49b(3) of the Organic Act of Puerto Rico to exempt Puerto Rico from the application of Federal laws. To that end, the Commission is authorized

to examine into, and to hold hearings on, the inapplicability of Federal laws to Puerto Rico by reason of local conditions.

3. All executive departments and agencies of the Federal Government are authorized and directed to cooperate with the Commission in its work and to furnish the Commission such information as the Commission may require in the performance of its duties.

4. The Commission shall continue to exist until the President terminates its existence by Executive order.

# In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-82

JOSE M. ALONSO GARCIA, ET AL.,
PETITIONERS,

*v.*

ADALBERT FRIESECKE AND BRITISH MARINE MUTUAL INSURANCE ASSOCIATION ET AL.,
RESPONDENTS.

*v.*

SEA LAND SERVICE, INC., ET AL.,
RESPONDENTS.

## PETITIONERS' SUPPLEMENTAL BRIEF

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RESPONDENTS.



## PETITIONERS' SUPPLEMENTAL BRIEF

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Petitioners file this supplemental brief pursuant to Rule 24(4) of the Revised Rules of this Court.

### Reasons for Filing Supplemental Brief

The brief in opposition to the petition for a writ of certiorari includes statements not in accord with decisions of this Court which are omitted from the brief in opposition. Petitioners did not anticipate inaccurate or inadequate presentation of propositions of law at the time of filing their petition.

### Argument

I. Exceptions to the Doctrine of Uniformity.

The brief in opposition cites four cases to show areas of lack of uniformity in the maritime law. Brief in opposition, p. 7, n. 2. *The Tungus* v. *Skovgaard,* 358 U.S. 588 (1959) and *Gillespie* v. *United States Steel Corp.,* 379 U.S. 148 (1964) were both explained and limited by *Moragne* v. *States Marine Lines, Inc.,* 398 U.S. 375 (1970), to which respondents do not refer. In *Moragne* this Court pointed out the desirability of uniformity both to those who own ships and those who work on them precisely in connection with liability for injuries to the latter.

Respondents also cite *McAllister* v. *Magnolia Petroleum Co.,* 357 U.S. 221 (1958) in the same context. This Court there said that it was unnecessary to decide the broad question of whether a state court was free to apply its own statutes of limitations or whether it was bound to

apply the admiralty doctrine of laches. 357 U.S. at 224. The reference to the question in *Moragne* indicates approval by this Court of applying the accepted maritime law doctrine of laches. 398 U.S. at 406.

II. Inapplicability of the FELA to Puerto Rico.

Respondents call attention to the inapplicability of the "FELA" to Puerto Rico. Brief in opposition, p. 12, n. 3. The history of that legislation in relation to Puerto Rico actually undercuts respondents' contention.

An almost identical footnote was included in respondents' brief in the District Court. In reply petitioners there pointed out that the Safety Appliance Act of March 2, 1903, 45 U.S.C. §§ 8-10, had previously been held to apply to Puerto Rico, as in the States, in spite of no express application by Congress. *American R. Co.* v. *Birch*, 224 U.S. 547 (1912); *American R. Co.* v. *Didricksen*, 227 U.S. 145 (1913), *Camunas* v. *Porto Rico Ry. Light & Power Co.*, 272 Fed. 924 (1st Cir. 1921), *appeal dismissed* 260 U.S. 700, cited by respondents, resulted from the enactment of § 38 of the Organic Act of 1917, 48 U.S.C. § 751, which specifically exempted Puerto Rico from the application of the federal act.

III. The Rights of Residents of Puerto Rico.

Respondents rely on *Downes* v. *Bidwell*, 182 U.S. 244 (1901) and *Dorr* v. *United States*, 195 U.S. 138 (1904); with the statement that "[i]n the same line of thought are *Balzac* v. *People of Puerto Rico*, 258 U.S. 298 (1922) and *Torres* v. *Commonwealth of Puerto Rico*, — U.S. —, 99 S. Ct. 2425 (1979)." Brief in opposition, p. 31. No reference is made to *Reid* v. *Covert*, 354 U.S. 1 (1956), cited in the concurring opinion to *Torres* v. *Commonwealth*.



The majority opinion in *Torres* points to the equivalent personal rights afforded to the residents of Puerto Rico from 1917 to 1952 with respect to the Fourth Amendment. The concurring opinion, 99 S. Ct. at 2432, quotes language from *Reid* v. *Covert*, which clearly puts the *Downes*, *Dorr*, and *Balzac* cases in a totally different line of thought.

**Conclusion**

It is respectfully prayed that this supplemental brief be considered with the petition for a writ of certiorari.

Respectfully submitted,

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# In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-82

JOSE M. ALONSO GARCIA, ET AL.,
PETITIONERS,

*v.*

ADALBERT FRIESECKE AND BRITISH MARINE MUTUAL INSURANCE ASSOCIATION ET AL.,
RESPONDENTS,

*v.*

SEA LAND SERVICE, INC., ET AL.,
RESPONDENTS.

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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# In the Supreme Court of the United States

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**JOSE M. ALONSO GARCIA, et al.,**
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*v.*

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*v.*

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RESPONDENT.

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**FRANCISCO GARCIA SERRANO & JOSE M. ALONSO GARCIA, etc.,**
PETITIONERS,

*v.*

**GULF ATLANTIC TRANSPORT CORP. & CONTINENTAL INS. CO.,**
RESPONDENTS,

*v.*

**ENTERPRISES SHIPPING CO., INC.,**
RESPONDENT.

---

**GREGORIO TORRES MATOS,**
PETITIONER,

*v.*

**COMPAGNIE GENERALE TRASATLANTIQUE,**
RESPONDENT,

*v.*

**FRED IMBERT, INC. & GLENN FALLS INS. CO.,**
RESPONDENTS.

**VIRGINIA MAYSONET, ETC., et al.**
PETITIONERS,

*v.*

**AMERICAN EXPORT ISBRANDSTEN LINES,**
RESPONDENT,

*v.*

**SAN JUAN MERCANTILE CORP., et al.,**
RESPONDENT.

---

**RAFAEL A. CLAUDIO TORRES,**
PETITIONER,

*v.*

**SEA LAND SERVICE, INC.,**
RESPONDENT.

---

**JOSE A. MELENDEZ FLORES,**
PETITIONER,

*v.*

**CORPORACION RAYMOND, S.A., et al.,**
RESPONDENTS.

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# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## Statutes Involved

1. Constitution, art. IV, § 3, cl. 2—

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; . . ."



2. Second Organic Act of 1917, § 7 (Puerto Rico Federal Relations Act, 48 U.S.C. § 747)—

*Public property transferred*

All property which may have been acquired in Puerto Rico by the United States under the cession of Spain in the treaty of peace entered into on the 10th day of December, 1898, in any public bridges, road houses, water powers, highways, unnavigable streams and the beds thereof, subterranean waters, mines or minerals under the surface of private lands, all property which at the time of cession belonged, under the laws of Spain then in force, to the various harbor works boards of Puerto Rico, all the harbor shores, docks, slips, reclaimed lands, and all public lands and buildings not reserved by the United States for public purposes prior to March 2, 1917, is placed under the control of the government of Puerto Rico, to be administered for the benefit of the people of Puerto Rico; and the Legislature of Puerto Rico shall have authority, subject to the limitations imposed upon all its acts, to legislate with respect to all such matters as it may deem advisable. Mar. 2, 1917, c. 145, § 7, 39 Stat. 954; May 17, 1932, c. 190, 47 Stat. 158.

3. Second Organic Act of 1917, § 8 (Puerto Rico Federal Relations Act, 48 U.S.C. § 749)—

*"Harbors and navigable waters transferred*

The harbor areas and navigable streams and bodies or water and submerged lands underlying the same in and around the island of Puerto Rico and the adjacent islands and waters, owned by the United States on March 2, 1917, and not reserved by the United States for public purposes, are placed under the con-

trol of the government of Puerto Rico, to be administered in the same manner and subject to the same limitations as the property enumerated in sections 747 and 748 of this title. All laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, except so far as the same may be locally inapplicable, shall apply to said island and waters and to its adjacent islands and waters. Nothing contained in this chapter shall be construed so as to affect or impair in any manner the terms or conditions of any authorizations, permits, or other powers lawfully granted or exercised in or in respect of said waters and submerged lands in and surrounding said island and its adjacent islands by the Secretary of the Army or other authorized officer or agent of the United States prior to March 2, 1917. Mar. 2, 1917, c. 145, § 8, 39 Stat. 954; May 17, 1932, c. 190, 47 Stat. 158; July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501."

4. Second Organic Act of 1917, § 37 (Puerto Rico Federal Relations Act, 48 U.S.C. § 821)—

*"Legislative power*

The legislative authority shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize the municipalities so far as may be necessary, to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal any or all laws and ordinances of every character in force in Puerto Rico or municipality or district thereof on March 2, 1917, insofar as such alteration, amendment, modification, or repeal may be consistent with the



provisions of this chapter. Mar. 2, 1917, c. 145, § 37, 39 Stat. 964; May 17, 1932, c. 190, 47 Stat. 158."

## Reasons for Denying the Writ

I. THERE HAS NEVER BEEN ANY REQUIREMENT OF FULL CONSTITUTIONAL UNIFORMITY IN PUERTO RICO. WITH NO COMMON DENOMINATOR THERE CAN BE NO CONFLICT BETWEEN THE DECISIONS INTERPRETING THE LONGSHOREMEN'S ACT AND THOSE INTERPRETING THE PUERTO RICO COMPENSATION ACT.

Almost from the very outset there has been a lack of application to Puerto Rico of the Constitutional provisions otherwise uniform in the United States. Thus in *Downes* v. *Bidwell,* 182 U.S. 244, 277, 287, this Court held in 1901 that article 1, section 8 of the Constitution requiring duties to be uniform "throughout the United States" did not pertain to Puerto Rico.

In *Dorr* v. *United States,* 195 U.S. 138, 149 (1904) it was held ". . . that the Constitution does not without legislation, and of its own force, carry such right (trial by jury) to territory (Philippine Islands) * * *", (emphasis added) not made a part of or incorporated into the United States.

Twenty years after *Downes* v. *Bidwell, supra,* this Court said in *Balzac* v. *People of Puerto Rico,* 258 U.S. 298, 304 (1922) that it was "clearly settled" that Constitutional requirements appearing in article 3 of the Constitution and in the 6th and 7th Amendments as to jury trials, did not apply to territory not incorporated into the Union and that Puerto Rico was not so incorporated (p. 305). This Court also went on to answer, forty-five years ago, petitioner's current argument that because citizens of Puerto Rico are citizens of the United States, their rights must

be in every respect identical (pp. 307-309). The above has been affirmed once again by this Court in the recent decision of *Torres* v. *Commonwealth of Puerto Rico*, — U.S. —, 99 S.Ct. 2425 (1979).

Given this background, the decision of the United States Court of Appeals for the First Circuit in *Lastra, et al.* v. *New York and Porto Rico S.S. Co.*, 2 F.2d 812 (1924) follows in logical sequence. Noting (p. 813) that the Constitution does not apply to Puerto Rico *ex proprio vigore*,[1] the Court found that the admiralty provision of the Constitution (art. 3, § 2) did not therefore extend to Puerto Rico unless Congress had put it there by legislation (pp. 813-814).

The subsequent decision in 1956 of *Guerrido* v. *Alcoa Steamship Company Inc.*, 234 F.2d 349 (1st Cir.), adhered to this view, stating (p. 352):

> "Since Puerto Rico is neither a state of the union nor a territory which has been incorporated into the union preliminary to statehood, it is true that all the provisions of the federal Constitution are not necessarily in force within its borders."

In 1960 in *Fonseca* v. *Prann*, 282 F.2d 153, the Court of Appeals for the First Circuit faced squarely up to whether or not uniformity of the maritime law was required in Puerto Rico. Reviewing *Lastra* and *Guerrido*, the Court found (p. 156) that it was not aware of any Constitutional principle which prevented Congress from giving Puerto

[1] In approving a Constitution for Puerto Rico, Congress in House Report 2275 of June 19, 1950 (1950 U.S. Code Congressional Service, 81st Congress, Second Session, p. 2681) distinguished between the then incorporated territories of Alaska and Hawaii, observing that the Constitution and laws of the United States were extended to them (p. 2683) but (p. 2684) "The Constitution has never been extended to Puerto Rico".



Rico jurisdiction over its own waters, fully cognizant (p. 157) that its holding "creates an area of lack of uniformity in the maritime law." and going on to observe that "absolute uniformity in things maritime is not a constitutional requirement nor is it even essential to the proper harmony of the maritime law in its interstate and international relations."[2]

With the issue of uniformity specifically posed by the Court below, a petition for writ of certiorari was filed in *Fonseca*, urging the same arguments as to uniformity, Fourteenth Amendment and conflicts with this Court's decisions, (See Petition, No. 709 October Term 1960) and this Court declined to intervene, 365 U.S. 860 (1960), on this same issue three years before *Reed* v. *S/S Yaka*, 373 U.S. 410 (1963).

Involving similar issues insofar as the admiralty and maritime jurisdiction is concerned, this Court had the opportunity to review similar arguments to the ones presented in the Petition for Certiorari now under consideration. See *Alcoa Steamship Company* v. *Perez Rodriguez*, 376 F.2d 35 (1st Cir. 1967), *cert. denied*, 389 U.S. 905 (1967).

The decision entered by the Court of Appeals for the First Circuit follows eight decisions of said Court. *Lastra* v. *New York & Puerto Rico Steamship Company*, 2 F.2d 812 (1st Cir. 1924), *appeal dismissed*, 269 U.S. 536 (1925);

[2] Some other areas of lack of uniformity in the maritime law are:
(1) application of various State death acts to maritime torts. *MV/Tungus et al.* v. *Skovgaard*, 358 U.S. 588 (1959);
(2) the possession of a cause of action for wrongful death for unseaworthiness under state statutes by estates of longshoremen and harbor workers, but not by those of seamen, *Gillespie* v. *U. S. Steel*, 379 U.S. 148 (1964);
(3) reference to various state statutes of limitation by analogy, *McAllister* v. *Magnolia Petroleum Co.*, 357 U.S. 221 (1958);
(4) the regulation of marine insurance by the States, *Wilburn Boat Co.* v. *Firemen's Fund Ins. Co.*, 348 U.S. 310 (1955).

*Guerrido* v. *Alcoa Steamship Company,* 234 F.2d 349 (1st Cir. 1956); *Fonseca* v. *Prann,* 282 F.2d 153 (1st Cir. 1960), *cert. den.* 365 U.S. 860 (1961); *Waterman Steamship Corporation* v. *Rodriguez,* 290 F.2d 175 (1st Cir. 1961); *Alcoa Steamship Company* v. *Perez Rodriguez,* 376 F.2d 35 (1st Cir. 1967) *cert. den.* 389 U.S. 905 (1967); *Alcoa* v. *Velez,* 376 F.2d 521 (1st Cir. 1967); *Salas Mojica* v. *Puerto Rico Lighterage,* 492 F.2d 904 (1st Cir. 1974); *Caceres* v. *San Juan Barge,* 520 F.2d 305 (1st Cir. 1975), one decision of the Eastern District of Pennsylvania, *Fan Fan* v. *Berwind Corporation,* 362 F.Supp. 793 (E.D.Pa. 1973), and one decision of the Second Circuit, *William* v. *McAllister Brothers,* 534 F.2d 19 (2nd Cir. 1976). Through more than fifty years the consensus of these decisions has been that under Sections 7, 8, and 37 of the second Puerto Rico Organic Act of 1917, called the Jones Act, 39 Stat. 951, 954, 964, Congress gave Puerto Rico general legislative power over its own waters and in accordance therewith, the local legislature was and is entitled to enact its own workmen's compensation act for maritime employees to the exclusion of the maritime law of the United States. As recently as 1978, this Court, in the case of *Construction Aggregates Corp.* v. *Rivera de Vicenty,* 573 F.2d 86 (1978), recognized that Puerto Rico had authority to apply its Workmen's Compensation Law to various categories of marine workers, a question which had already been put at rest in many previous decisions in the Court of Appeals for the First Circuit. That same year, said Court, in *Rios* v. *Empresas Lineas Maritimas Argentinas,* 575 F.2d 986 (1978), stated at page 989, footnote 3, in its pertinent part, that the Longshoremen and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.,* had been held in the past not to apply to Puerto Rico because of the Puerto Rico Workmen's Accident Compensation Act, 11 L.P.R.A. 1, *et seq.*



The foundation of the delegation of legislative powers doctrine was the *Guerrido* case, *supra,* where the Court of Appeals brought at least that much of the *Lastra* up to date, saying in general (p. 354):

> "Our conclusion was that these three sections gave the Puerto Rican Legislature general legislative power concerning Puerto Rican waters. To that conclusion we adhere. Certainly by these provisions, Congress evidenced an intent to confer such power upon the insular Legislature to the extent of its constitutional authority to do so."

Harmonizing the delegation of legislative powers of Sections 7, 8, and 37 of the Jones Act with the General Maritime Law of the United States, in force in Puerto Rican waters, the Court of Appeals stated (p. 354):

> "We conclude, therefore, that the rules of the admiralty and maritime law of the United States are presently in force in the navigable waters of the United States in and around the island of Puerto Rico to the extent that they are not locally inapplicable either because they were not designed to apply to Puerto Rican waters or because they have been rendered inapplicable to these waters by inconsistent Puerto Rican legislation. This is not to say, of course, that Puerto Rican legislation could thus supplant a rule of maritime law which Congress in the exercise of its constitutional power has expressly made applicable to Puerto Rican waters."

Said Court specifically held (p. 355):

> "In the *Lastra* case, this court held that the Workmen's Accident Compensation Act of Puerto Rico

which was then in force applied to maritime workers. We adhere to that view. For we still think, as we indicated in the *Lastra* case, that Congress intended by section 8 of the Jones Act to give the Legislature of Puerto Rico full power to provide compensation for marine workers injured in Puerto Rican waters to the exclusion of the remedies against their employers provided by the American Maritime Law."

Later, in the *Fonseca* case, *supra*, the Court said again (p. 157):

"Instead in *Lastra* and *Guerrido* this court held and *we agree* that Congress in the valid exercise of powers conferred upon it by the Constitution gave the legislature of Puerto Rico power to enact legislation inconsistent with the Jones Act and the general maritime law, and that the Legislature of Puerto Rico had exercised its power in its Workmen's Accident Compensation Act." (Emphasis supplied)

Of course, in order for the compensation act to be held inconsistent with remedies under the Jones Act and maritime law of the United States, the Court of Appeals necessarily had to accept the exclusiveness of the compensation act, which it effectively did in *Fonseca, Alcoa* and *Salas Mojica.*

This thesis was expressly followed in *Waterman Steamship Corporation* v. *Rodriguez,* 190 F.2d 175, 179 (1st Cir. 1961) where the *Guerrido* language was quoted to the effect that the general maritime law of the United States is "locally inapplicable" in Puerto Rico when rendered so by "inconsistent Puerto Rican legislation", viz., the Puerto Rico Workmen's Accident Compensation Act, and by also saying in *Waterman,* p. 180, on the very issue of exclusiveness:



"Nor it is questioned that a longshoreman who is injured in Puerto Rican waters by reason of the unseaworthiness of a vessel owned by one *who is not his employer*, may enforce his rights in a civil action as well as in a suit in admiralty." (Emphasis supplied)

Being consistent, said Court states in the *Alcoa* case, *supra,* at page 38:

"We adhere to the views expressed in our prior opinions to the effect that the Puerto Rico Workmen's Accident Compensation Act has, within the area of its applicability, displaced the remedies of the maritime law including the Federal Longshoremen's Act and provides for the sole remedy of a Puerto Rico longshoremen against his employer for injuries sustained in the course of his employment. We have been referred to no Puerto Rico statute or congressional enactment which has modified our holding in the *Guerrido* case that the local workmen's compensation act supplanted the law of unseaworthiness in respect to locally employed maritime workers. Moreover, particularly in view of the unique status of Puerto Rico, we think that if and when Congress deems it advisable to extend law to Puerto Rico which would otherwise have been inapplicable to that Commonwealth, it will do so in clear and explicit terms."

Finally, the Court of Appeals for the First Circuit, in *Caceres* v. *San Juan Barge Company,* 520 F.2d 305 (1975), ratified the doctrine, citing five previous decisions and stating:

"This court has discussed the relationship between federal maritime law, including the Jones Act, and

the Puerto Rico Workmen's Accident Compensation Act on prior occasions. . . . In each of these five cases the accident had occurred inside the territorial waters of Puerto Rico, and in each case the court, relying on the Second Puerto Rico Organic Act, held or stated *in dicta* that "the Workmen's Accident Compensation Act, and not federal maritime law is the exclusive remedy in suits against an insured employer for injuries sustained in the course of employment."

There is nothing new in the petition herein on the issue of uniformity.

II. In the Absence of a Constitutional Mandate for Uniformity in Puerto Rico, Congress, Acting Under Its Constitutional Power To Legislate for National Territories, Could Have Extended the Admiralty Provision of the Constitution to Puerto Rico, but Has Instead Enabled Puerto Rico To Enact Its Own Legislation for Local Maritime Workers.[3] Under the Circumstances, Petitioners Fail To Inform This Court How or Why It Should Intervene.

There is no question that under its power to legislate for territories (art. IV, § 3, cl. 2 of the Constitution), Congress could have made the statutory and general maritime law of the United States fully applicable to Puerto Rico. This power has been recognized in all the leading Court of Appeals decisions on the subject. As *Lastra* points out (p. 813) "We find no such legislation but the reverse".

[3] Nor does the FELA cover railroad workers in Puerto Rico. Despite its otherwise uniform application as described by this Court in *Second Employer's Liability Cases*, 223 U.S. 1, 55 (1912), *New York Central R.R. Co.* v. *Winfield*, 244 U.S. 147 (1917), it has long been established that railroad employees in Puerto Rico are covered by the local compensation act and not by the FELA. *Camunas* v. *Porto Rico Ry. Light & Power Co.*, 272 F. 924 (1st Cir. 1921), *appeal dismissed* 260 U.S. 700.



See also *Guerrido* v. *Alcoa Steamship Company*, 234 F.2d 349 (1st Cir. 1956); *Fonseca* v. *Prann*, 282 F.2d 153 (1st Cir. 1960), *cert. den.* 365 U.S. 860 (1961); *Waterman Steamship Corporation* v. *Rodriguez*, 290 F.2d 175 (1st Cir. 1961); *Alcoa Steamship Company* v. *Perez Rodriguez*, 376 F.2d 35 (1st Cir. 1967) *cert. den.* 389 U.S. 905 (1967); *Alcoa* v. *Velez*, 376 F.2d 521 (1st Cir. 1967); *Salas Mojica* v. *Puerto Rico Lighterage*, 492 F.2d 904 (1st Cir. 1974); *Caceres* v. *San Juan Barge*, 520 F.2d 305 (1st Cir. 1975); *Fan Fan* v. *Berwind Corporation*, 362 F.Supp. 793 (E.D. Pa. 1973); *William* v. *McAllister Brothers*, 534 F.2d 19 (2nd Cir. 1976).

This Court has also acknowledged the broad powers given by Congress to Puerto Rico, commenting in *People of Puerto Rico* v. *Shell Company, Ltd.*, 302 U.S. 253, 261-262 (1937) that the aim of the Foraker Act, (April 12, 1900, Chapter 191, 31 Stat. 77) and the Organic Act (March 2, 1917, Chapter 145, 39 Stat. at L. 951) was to give "full power of local self-determination" to Puerto Rico. Referring also (p. 263) to "the sweeping character of the congressional grant of power contained in the Foraker Act and the Organic Act of 1917", this Court noted the "general purpose of Congress to confer power upon the government of Puerto Rico to legislate in respect of all local matters is made manifest".

Succeeding enactments have effectively demonstrated how the autonomy of Puerto Rico has been expanded by Congress, in what this Court has termed "the unique historic relationship between the Congress and the Commonwealth of Puerto Rico, . . .". *Katzenbach* v. *Morgan*, 384 U.S. 641, 658 (1966).

The progression can be visualized when it is noted that under the Foraker Act of 1900, 31 Stat. 77, Puerto Ricans were able to elect popularly only the lower house of the territorial legislature and the Resident Commissioner.

Under the Organic Act of 1917, 39 Stat. 951, the upper house was brought under the elective procedure and the appointed Governor able to select four of six cabinet members. In 1947, 61 Stat. 770, the Governor of Puerto Rico was permitted to be elected popularly rather than appointed by the President of the United States, and able to appoint all his cabinet members. In 1950, Puerto Ricans were permitted to write their own constitution (48 U.S.C. 731b), which they did after a referendum approving a Constitution, a Constitutional Convention, a referendum approving the Constitution as framed, Congressional and Presidential approval and a proclamation by the Governor of Puerto Rico on July 25, 1952. This Constitution afforded Puerto Rico the largest measure of independence yet accorded it by Congress. See House Report 1832, April 30, 1952 (1952 U.S. Code Cong. Service, 82nd Congress, Second Session pp. 1892-1902), continuing also the message of President Truman.

Illustrative of the official attitude of the United States toward Puerto Rico, was a communication by the State Department to the United Nations, characterizing the new status of Puerto Rico as no longer that of "non-self-governing nation", Bulletin of the Department of State, Vol. 28, No. 721, April 20, 1953, p. 584, *et seq.*

The various House Reports reflect this trend.

House Report No. 455, May 26, 1947 (1947 U.S. Code, Cong. Service, 80th Congress, First Session, pp. 1587-1589) seeking to amend the Organic Act to provide for a popular election of the Governor of Puerto Rico, pointed out that the existing Organic Act of 1917 gave the Puerto Rican legislature authority extending "to all matters of a legislative character not locally inapplicable". The Congressional Report went on to state that the people of Puerto Rico had demonstrated a "high degree of political consciousness by the extensive use of the franchise", and that



82.2% of electorate went to the polls in 1944. The report also noted the policy of the United States to encourage the "self-governing ability" of the people of Puerto Rico since 1900.

In 1950, House Report 2275, repeating in substance Senate Report S 3336 (1950 U.S. Code Cong. Service, 81st Congress, Second Session, p. 2681) approved the adoption of their own constitution by the people of Puerto Rico, noting (p. 2682) that this would

> "further implement the self-government principle established by the Congress as the cornerstone and fundamental policy governing the relationship of the United States toward territories over which it has jurisdiction."

The Report commented further (p. 2682) that the people of Puerto Rico were overwhelmingly in favor of having their own constitution, and further that this legislation "constitutes a reflection of the very strong sentiment which exists in Puerto Rico for a greater measure of local autonomy which this bill represents".

House Report No. 1832, April 30, 1952 (1952 U.S. Code Cong. Service, 82nd Congress, Second Session (p. 1892) commented favorably on the Constitution for Puerto Rico. This was said to constitute (p. 1892) * * * the latest of a series of enactments through which the Federal Government has provided ever increasing self-government in Puerto Rico". The Constitution, it was said (p. 1899) "represents the will of the people of Puerto Rico. Upon its approval the people of Puerto Rico assume full authority and responsibility of local self-government".

President Truman in his message of April 22, 1952, recommending Congressional approval of the Constitution, stated (p. 1902):

"With its approval, full authority and responsibility for local self-government, will be vested in the people of Puerto Rico. The Commonwealth of Puerto Rico will be a government which is truly by the consent of the governed."

On the very issue of the Puerto Rico Compensation Act, the decisions of the Court of Appeals for the First Circuit (as previously mentioned) specifically acknowledge the powers of Congress with *Fonseca*, saying (282 F.2d 153, 157):

"Of course, if Congress sees fit it may supplant the local legislation as it applies to local navigable waters by making the Jones Act and the general maritime law of unseaworthiness specifically applicable in Puerto Rican waters, but it is not our function to do so."

In view of all the foregoing, the failure of Congress to act in this area may be deemed to be advised rather than inadvertent. Indeed, House Report No. 455, May 26, 1947, (1947 U.S. Code Cong. Service, 80th Congress, First Session, p. 1587) pointedly observes that for the thirty years since the Organic Act of 1917 "Congress has never found it necessary to exercise its prerogative of annulling any law enacted by the Puerto Rican legislature".

It must be presumed therefore that when Congress enacted the Organic Act of 1917, and particularly Sections 7, 8, and 37 thereof (continued as 48 U.S.C. 747, 749, 821 in the Puerto Rico Federal Relations Act), Congress gave the Puerto Rican legislature, as was said in *Guerrido*, 234 F.2d 349 "general legislative power concerning Puerto Rican waters". (p. 354). This interpretation has now survived for the ensuing fifty years in a climate of ever widening autonomy for Puerto Rico.



There being no constitutional requirement for uniformity (No. I) and with Congress having refrained from intervention (No. II), petitioners afford this Court no reason why or how it should do so.

## III. There Being No Constitutional or Congressional Mandate for Uniformity, the Only Remaining Consideration Is as to the Construction of the Local Compensation Act of Puerto Rico, an Area Wherein This Court Traditionally Defers to the Local Courts.

There being no issue requiring constitutional or congressional interpretation, the only remaining question is as to construction of the exclusiveness of remedy provision in the local act, a task reserved for the local courts. While this Court has freely construed the Longshoremen and Harbor Workers Compensation Act,[4] it has traditionally deferred to the decisions of the Supreme Court of Puerto Rico in interpreting local Puerto Rico legislation.[5]

Thus, in discussing the very act in question, the Puerto Rico Workmen's Accident Compensation Act, this Court said in *Bonet* v. *Texas Co.*, 308 U.S. 463, 471 (1940), citing the earlier decision of *Bonet* v. *Yabucoa Sugar Co.*, 306 U.S. 505, 510:

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[4] The exclusiveness of remedy provision alone was passed upon in *Nogueira* v. *New York, New Haven and Hartford Railroad Co.*, 281 U.S. 128, 137 (1930); *Crowell* v. *Benson*, 285 U.S. 22, 42 (1932); *Norton* v. *Warner Company*, 321 U.S. 565, 570 (1944); *Swanson* v. *Marra Brothers, Inc.*, 328 U.S. 1 (1946); *Seas Shipping Company* v. *Sieracki*, 328 U.S. 85, 102 (1946); *Ryan Stevedoring Co.* v. *Pan-Atlantic S.S. Corp.*, 350 U.S. 124, 125, 129, 140 (1956); *Reed* v. *S/S Yaka*, 373 U.S. 410, 414-415 (1963); *Jackson* v. *Lykes Brothers Steamship Co., Inc.*, 386 U.S. 731 (1967).

[5] Indeed, this Court has, in at least one context, agreed with the local interpretation of the Puerto Rico Act as to exclusiveness. See *Guzman* v. *Pichirilo*, 369 U.S. 698, 699 (footnote 1) (1962).

"Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island."

Pointing out that lip-service to this admonition was not enough, this Court went on to say (p. 471):

"To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal choose what might seem, on appeal, to be the less reasonable of two possible interpretations."

This is so even if the local rule may be one, as was said in *DeCastro* v. *Board of Commissioners of San Juan,* 322 U.S. 451, 458-459 (1944), which is "out of harmony with our traditional system of law and statutory construction". (and further p. 455):

"Hence we have emphasized as a cardinal principle of review in such cases that the mere fact that our own system of law and statutory construction would call for the application of one rule to a given set of facts, does not preclude the adoption of a different one by the insular courts."

The rule of the *Bonet* and *DeCastro* cases was reaffirmed in *In Re Sawyer,* 360 U.S. 622, 640 (1959) when this Court said:



"Of course this Court and the Courts of Appeal must give the Territorial Courts freedom in developing principles of local law and in interpreting local legislation."

The unique situation of Puerto Rico has been recognized by this Court as recently as in the 1970 decade, specifically in *Fornaris* v. *Ridge Tool,* 400 U.S. 41 (1970); *Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 416 U.S. 663 (1974) and *Examining Board* v. *Flores de Otero,* 426 U.S. 572 (1976). In these cases, the Supreme Court of the United States redefines what is the status, importance and binding forces of precedents of a judicial nature entered by the Supreme Court of Puerto Rico, all in light of the fact that now Puerto Rico is not the same territory as defined in the pre-1950-52 era. The fact that the applicability of federal law to the Commonwealth of Puerto Rico is not uniform and is not consistent with the continental United States is evident. The Supreme Court notices in *Fornaris* v. *Ridge Tool,* that the relations of the federal courts with Puerto Rico have often raised delicate problems. This means that the Supreme Court of the United States is aware of the fact that federal law does not apply in Puerto Rico as it would in a state; that there is no requirement for full constitutional uniformity in Puerto Rico; that in the absence of a constitutional mandate for uniformity in Puerto Rico, Congress could very well legislate over Puerto Rican matters insofar as to extend or not extend the admiralty provisions of the Constitution and that it is possible that local law may displace federal and/or congressional mandates which impose uniformity upon the different states. This Court has pointed out in those three cases what should be the rule to be followed by federal courts when dealing with Puerto Rico matters. This Court was specific in stating that on many occasions, when

federal courts reversed Puerto Rico courts, they did so following the natural inclination to construe Puerto Rico laws in an Anglo-Saxon tradition leaving little room to the interpretation that these laws should have been afforded taking into consideration Puerto Rico's Spanish background and difference in approach to regulating some of its internal problems as a matter of tradition. As a result, this Court handed down the rule that a Puerto Rico court should not be overruled on its construction of local law unless it could be said to be inescapably wrong.

In light of the above, the petitioners have failed to afford this Court reasons why the Supreme Court of the United States should depart from the precedents handed down by the Supreme Court of Puerto Rico, upon which the decision of the Court of Appeals is based.

IV. THE SUPREME COURT OF PUERTO RICO HAS CONSISTENTLY AND WITHOUT EXCEPTION DEEMED ITS WORKMEN'S ACCIDENT COMPENSATION ACT TO BE THE EXCLUSIVE REMEDY OF ALL EMPLOYEES (INCLUDING LOCAL SEAMEN) AGAINST THEIR EMPLOYERS WHO COMPLIED WITH THE ACT. IN TURN, THE SUPREME COURT OF PUERTO RICO HAS ELECTED TO MAKE APPLICABLE WITHIN THE COMMONWEALTH OF PUERTO RICO THE DOCTRINE OF "THE STATUTORY EMPLOYER" INSOFAR AS THE ABOVE-MENTIONED EMPLOYEES AND EMPLOYERS IS CONCERNED.

In *Musick* v. *Puerto Rico Telephone Co.*, 357 F.2d 603 (1st Cir. 1966) the Court of Appeals made an interpretation of the concept of statutory employer contained in the Puerto Rico Workmen's Accident Compensation Act and held that said statutory employer was immune from lawsuit by the employees of his subcontractors.

On the basis of the *Musick* doctrine, the United States District Court for the District of Puerto Rico held in



*Lopez Correa* v. *Marine Navigation Co.*, 218 F.Supp. 993 (1968) that where the owner of a vessel subcontracted the loading and unloading operations to a stevedoring contractor who employed a longshoreman who was injured during such operations while the vessel was afloat on navigable waters within the territory limits of Puerto Rico, and the stevedoring contractor had insured its employee under the Workmen's Accident Compensation Act and the longshoreman had been awarded compensation under the Act, the shipowner was the longshoreman's statutory employer under the Act and the longshoreman was barred from suing the owner.

The statutory employer doctrine in *Lopez Correa* and *Musick* was reversed by the Court of Appeals in *Colon Nunez* v. *Horn Linie*, 423 F.2d 952 (1970). In reaching that result the Court of Appeals cited *Gonzalez* v. *Cerveceria Corona, Inc.*, an opinion of the Supreme Court of Puerto Rico of January 29, 1969, which said Court believed was inconsistent with *Musick*.

The Court of Appeals stated in *Colon Nunez* (p. 954):

> "When we decided *Musick* we recognized that the precise question was one of first impression. No decision of the Supreme Court of Puerto Rico then provided guidance. Nor were we aware of the possible relevance of *Guerrido* perhaps because *Musick* contained no smell of the sea. We therefore addressed ourselves directly to the language of 11 L.P.R.A. § 21, which grants exemption from civil liability "when an employer insures his workmen or employees". We decided that the principal contractor was an "employer" within the meaning of this section because the statute sometimes imposed on him an employer's liability for compensation. He "insured" his subcontractor's employees, we thought, because he bore the

additional expense of hiring insured subcontractors. However, after a careful reconsideration prompted by a recognition of the relevance of *Guerrido* and by the subsequent decision of the Supreme Court in *Gonzalez* v. *Cerveceria Corona, Inc.*, we have decided that our earlier views were not required by the statute."

It is evident that in reversing *Musick*, the Court of Appeals felt that it was bound by the ruling of the Supreme Court of Puerto Rico in *Gonzalez* v. *Cerveceria Corona, Inc., supra.*

The Supreme Court of Puerto Rico has now definitely, clearly and squarely interpreted the Act on the question of statutory employer, in *Lugo Sanchez* v. *Puerto Rico Water Resources Authority*, decided on March 31, 1977, P.R. Bar Assoc. Ref. No. 1977-33, — D.P.R. — (1977); *Lydia Orza Rentas Vda. de Costas* v. *Puerto Rico Olefins, et al.*, decided on October 20, 1978, P.R. Bar Assoc. Ref. No. 1978-75, — D.P.R. — (1978), and *Miguel Rodriguez Cruz* v. *Union Carbide Grafito, Inc.*, decided on November 14, 1978, P.R. Bar Assoc. Ref. No. 1978-86, — D.P.R. — (1978).

In *Lugo Sanchez*, Puerto Rico Water Resources Authority contracted with Zachry International the construction of several thermoelectric plants which after being finished and delivered, continued receiving maintenance by Zachry. There was need to repair a valve in a steam pipe by Zachry, who notified the authority to eliminate all vapor from the line. Relying on representation of an Authority's engineer that the line was vapor free, Zachry's employee started removing a valve and a gush of steam escaped, injuring him. Zachry had insured its employees with the State Insurance Fund and the injured worker was compensated under the policy. Subsequently, he sued the Authority, based on the Authority's negligence in maintaining steam in the pipes and the false information of the



Authority's engineer which made the worker believe that there was no steam risk. The worker's complaint against Water Resources was based on Section 31 of the Workmen's Accident Compensation Act which provides that where the injury has been caused under circumstances making a third party responsible for such injury, an action may be brought against that third party.

The Superior Court awarded damages to the plaintiff holding that the Puerto Rico Water Resources Authority was a "third party". In reversing, the Supreme Court of Puerto Rico states:

"Inasmuch as the appellee Puerto Rico Water Resources Authority has by law the condition of 'statutory employer' it cannot be considered a third party even by the narrow definition of said term adopted in *Lopez Rodriguez* v. *Delama* (1974) 102 D.P.R. 254, 258, as including 'all persons other than the injured worker and his insured employer.'

"The third party subject to an action for damages for the purposes of Sec. 31 of the Act is a stranger, foreign and separate from the juridical interaction which connects the statutory employer (AFF) and the contractor (Zachry) with the State Insurance Fund in the common legal obligation of insuring its workers and employees under the provisions of the Workmen's Compensation Act. Under no premise can the employer to whom the Act has expressly dispensed of the obligation of insuring and who is a party regulated by the scheme of the compulsory exclusive insurance be considered a third party or a stranger causer of damage.

"There is no liability on the part of the principal contractor if the sub-contractor has secured or insured

compensation to his employees, as the purpose of the Act is to prevent subcontracting work to irresponsible sub-contractors and thus deprive injured workmen of the benefits of the compensation act. The purpose of the statute has been fulfilled if the sub-contractor carries insurance. To hold the principal liable for compensation, even though the sub-contractor carries insurance, would mean giving the employees of the sub-contractor a greater right than the employees of the principal, for they would have a right against their immediate employer, the sub-contractor, as well as the principal, which would not be in accordance with the intent of most of the legislatures.' *Schneider, Workmen's Compensation* Vol. 2, Sec. 326, p. 177, 1942 Edition.

"The act does not present the complications originated by this appeal. All that the act proposes is that the worker be protected by an insurance whose premiums will be paid by the Statutory employer or the contractor as the case may be. But the law does not require *two* insurances instead of one. Neither can there be *two* parties responsible under the legislative design, if one is exempted from the insurance."

In a footnote and refusing to follow *Colon Nunez,* the Supreme Court strongly criticizes that decision by stating:

"*Colon Nunez,* supra, nevertheless, is not a precedent to follow, for it is contrary to the constant doctrine maintained in the jurisprudence and treatises. Larson condemns in strong language this decision because it follows a minority criteria and goes beyond the predominant tendency in the jurisprudence. He asks 'What are we to make of this morsel of xenophobia?' Larson, *Workmen's Compensation,* Vol. 2A, Sec. 72:31



DP. 1541, 1976 Edition. In sound function of reasoning no one follows wrong precedents."

By adopting the *Lugo Sanchez* statutory employer doctrine in its judgment of dismissal, the United States District Court for the District of Puerto Rico has in effect closed the circle, returning to *Musick* and *Lopez Correa.*

After the United States District Court for the District of Puerto Rico entered the judgment of dismissal, the Supreme Court of Puerto Rico decided *Lydia Orza Rentas Vda. de Costas, supra,* and *Miguel Rodriguez Cruz, supra,* further ratifying and explaining the statutory employer *Lugo Sanchez* doctrine. In the *Lydia Orza Rentas* case the employees of a maintenance contractor died as a result of an accident that occurred during maintenance work in the P. R. Olefins Plant. Their dependents filed suit against P. R. Olefins, owner of the plant who had retained the services of the maintenance contractor. The Supreme Court of Puerto Rico confirmed a judgment dismissing the complaint against P. R. Olefins on the basis that it was the statutory employer of the deceased workers. In doing so, the Court further defined the term "statutory employer":

"This term now means owners of works and principals to whom the law imposes the obligation of insuring the employees of the contractors or subcontractors that they had retained for the performance of the works and services, when the latter do not have them insured. The purpose of this obligation is that said employees be insured, irrespective of whether the insurance is paid by the contractor or subcontractor, or in the alternative, by the owner of the works or the principal. The payment of that insurance by the contractor, the subcontractor, the principal, or the owner of the works, vests immunity upon all the em-

ployers against damage claims by the employees or by the Fund. *Lugo Sanchez* v. *Water Resources Authority*, supra, and *Colon Santiago* v. *Industrial Commission*, 97 D.P.R. 208 (1969)."

The Court also rejected the contentions of plaintiffs that P. R. Olefins had waived its statutory employer immunity by a contractual obligation to provide safe working conditions, explaining that the statutory employer immunity was not waived by a breach of either a contractual or statutory obligation (under the Puerto Rico Occupational Safety and Health Act, 29 L.P.R.A. 361 to 361bb, specifically section 361-e) to provide safe working conditions:

> "The breach of that legal obligation does not authorize any cause of action in favor of the employees, even when they suffered injuries and neither does it affect the immunity that the employer has under article 20 of the Puerto Rico Workmen's Compensation Act, 11 L.P.R.A. 21. If it was decided that an employer that is contractually bound to maintain safe working conditions is obligated to indemnify injured employees, the same remedy would exist when the obligation was created by statute. The effect of this would be to completely annul the employer immunity that is granted by said article 20 of the law."

The foregoing does away with petitioners' argument that they are entitled to an independent claim because of the obligation of the shipowner to furnish a safe and seaworthy vessel.

In the *Miguel Rodriguez Cruz* case, *supra*, the Supreme Court of Puerto Rico ratified the statutory employer doctrine indicating that immunity was not limited only in favor of those statutory employers that had paid premiums



to the State Insurance Fund covering the employees of their direct employer and neither was it limited to the situation where the direct employer was performing work in line with the usual activity of the statutory employer.

There is nothing novel about the statutory employer doctrine. As Larson points out in his Workmen's Compensation Law, Vol. 2, § 72.31, p. 175, 41 states have "statutory employers" or "contractual-under" statutes insulating the general or principal contractor from third party suits. See, for example, *Evans* v. *Newport News Shipbuilding & Dry Dock Company*, 361 F.2d 364 (4th Cir. 1966) and *Theriot* v. *Gulf Oil Corporation*, 427 F.Supp. 50 (E.D. La. 1976).

The Supreme Court of Puerto Rico has consistently and without exception deemed its Workmen's Accident Compensation Act to be the exclusive remedy of all employees (including local seamen) against their employers who comply with the Act. In support of the foregoing, see *United Porto Rican Sugar Co.* v. *District Court*, 44 P.R.R. 904, 906-907 (1933) (local seaman) and *Onna* v. *The Texas Co.*, 64 P.R.R. 497, 502 (1945). In *DeJesus* v. *Osorio, et al.*, 65 P.R.R. 601 (1946), the Court not only adhered to the exclusive provisions of the Puerto Rico Compensation Act, but went on to define the purposes of the act, and construe it as drawn (p. 604):

> "We cannot agree with the appellant. The purposes sought by workmen's compensation acts, such as ours, comprise not only the enlargement of the rights of the workman, but also the limitation of the employer's liability. While on the one hand the employer, or his insurer, is compelled to pay compensation without reference to any fault or negligence on his part, and the defense of a contributory negligence or negligence of a fellow servant and other defenses are eliminated,

> on the other hand, the amount of the compensation is limited and in case of death, compensation is allowed only to those who were dependent for support on the workman. It is therefore perfectly consistent with those purposes to eliminate, as our statute expressly did, all remedies against the employer based on a labor accident, except those expressly provided by the statute. If the result is, as in the case at bar, that certain persons are deprived of the right to compensation in the case of death, which they had before the approval of the act, we can not say that that result was not within the intention of the lawmaker, particularly in view of the fact that persons not dependent on the deceased workman are the only ones deprived of such right."

The Supreme Court of Puerto Rico decided *Inter Island Shipping Corporation* v. *Industrial Commission of Puerto Rico*, 89 P.R.R. 635 (1963) and in comprehensive opinion, traced the history and legislative background of the local compensation act, reviewed the *Lastra, Guerrido, Fonseca* and *Waterman* v. *Rodriguez* decisions, and found that the Puerto Rico Workmen's Compensation Act made the general maritime law of the United States "locally inapplicable" and under the circumstances was therefore the exclusive remedy of the injured seaman.

Subsequent decisions of the Supreme Court of Puerto Rico underscore its philosophy of approving the existing unified system of compulsory compensation administered under the aegis of the government for the benefit of the employee and the complete exclusion of any other redress against his employer who complies with the Act. This was expressed in *Cortijo Walker* v. *Water Resources*, 91 P.R.R. 557 (1964); *Marcano Torres* v. *Water Resources*, 91 P.R.R. 635 (1965); *Vda. de Andino* v. *Water Resources*, 93 P.R.R. 168 (1966); *Rosario Crespo* v. *Water Resources*, 94 P.R.R.



834, 850 (1967); *Velez* v. *Halco Sales Inc.*, 97 P.R.R. 426 (1969). For example, the Court said in *Cortijo Walker* that originally there were exceptions to the exclusiveness of remedy provisions when the injuries were caused by an illegal act or criminal negligence. These were eliminated in 1935, so that presently the only exception is the uninsured employer, and, as the Court, the same panel that decided the *Inter Island* case, *supra*, one year before, said "This is the only case".

While agreeing (p. 48) that it was "manifestly undesirable" that a local statute be first construed in a Federal Court, the Circuit Court of Appeals in *Camunas* v. *New York and Porto Rico Steamship Co.*, 260 F. 40, 55 (1919) nevertheless went on to construe the original compensation act and find that there was not even "reasonable doubt that the Puerto Rico Legislature intended to impose, upon employers and employees alike, the compensation theory in substitution for the negligence theory".

It is evident that Puerto Rico policy favors the certainty of workmen's compensation over the hazards of damage actions as the most salutary way of benefiting the workmen injured in the course of their employment and, as the Court observed in *Norton* v. *Warner Company*, 321 U.S. 565, 571 (1944) "Whether the (damage actions) are more desirable than system of compensation is not for us to determine".

The United States Court of Appeals for the First Circuit has elected to follow the Supreme Court of Puerto Rico in the decision which is the object of the petition for certiorari. In light of the contents of this opposition, it is evident that the Court of Appeals has acted correctly as a matter of law following sound judicial precedents. The petitioners have failed to show as a matter of law reasons why this interpretation should be the object of discretionary review by certiorari.

## V. There Is No Invidious Discrimination Against Puerto Rico Maritime Workers.

There is really no discrimination by the Puerto Rico government if as a matter of local concern it decides to treat all workers, including maritime workers, on an equal basis. In fact, if Puerto Rico devises a local workmen's compensation scheme giving benefits to its maritime workers similar to those given by the Federal Government, the other workers, left behind, could complain of discrimination.

The petitioners have not shown any compelling interest or property rights in their wish to participate in the compensation scheme of the Longshoremen and Harbor Workers' Compensation Act. Even within the stateside federal context, segregation of benefits is appropriate when it has a reasonable purpose and embodies a reasonable means of achievement. *Hughes* v. *Alexandria Scrap Corp.*, 426 U.S. 794 (1976); *McCullough* v. *Redevelopment Authority of City of Wilkes-Barre*, 522 F.2d 858 (C.A. Pa. 1975); *Sams* v. *Ohio Val. General Hospital Ass'n.*, 413 F.2d 826 (C.A. W.Va. 1969). This is specially true for Workmen's Compensation programs where traditionally great latitude is given and instances of discrimination more prejudicial than the contents of petitioners' complaints have not been found invidious. *Richardson* v. *Belcher*, 404 U.S. 78 (1971). (Congress could rationally conclude that needs served by workmen's compensation laws should continue to be met primarily by states, and their federal program that began to duplicate efforts of states might lead to gradual weakening or atrophy of state programs); *Lester* v. *Terry County, Texas*, 491 F.2d 975 (C.A. Tex. 1974); *Massey* v. *Thiokol Chemical Corp.*, 368 F.Supp. 668 (D.C. Ga. 1973); *Doe* v. *Hodgson*, 344 F.Supp. 964 (D.C. N.Y. 1972) *affirmed* 478 F.2d 537, *cert. denied*, 94 S.Ct. 732, 414 U.S. 1096; 38 L.Ed. 2d 55.



Even though they do not say so openly, petitioners are attacking the constitutionality of Sections 747, 749 and 821 of the Puerto Rico Federal Relations Act, 48 U.S.C. 747, 749 and 821, and section 19 of article 2 of the Puerto Rico Constitution because they allow Puerto Rico to apply its Puerto Rico Workers' Accident Compensation Act to its maritime workers and the states are not allowed to do this. What petitioners overlook is that almost from the very outset there has been a lack of application to Puerto Rico of the U.S. Constitutional provisions otherwise uniform in the United States. See *Downes* v. *Bidwell*, 182 U.S. 244, 277, 287, where this Court held in 1901 that Article 1, Section 8 of the Constitution requiring duties to be uniform "throughout the United States" did not pertain to Puerto Rico.

See also *Dorr* v. *United States*, 195 U.S. 138, 149 (1904), where it was held ". . . that the Constitution does not, without legislation and of its own force, carry such right (trial by jury) to territory (Philippine Islands) * * *", (emphasis added) not made a part of or incorporated in the United States. In the same line of thought are *Balzac* v. *People of Puerto Rico*, 258 U.S. 298, 304 (1922) and *Torres* v. *Commonwealth of Puerto Rico*, — U.S. —, 99 S.Ct. 2425 (1979), discussed under Roman numeral I in this opposition.

Recently, the Court of Appeals for the First Circuit has stated:

> "Under prevailing interpretations of Congressional enactments, the general maritime law governs actions in Puerto Rico *to the extent consistent with local law.*" (Emphasis supplied) *Carrillo* v. *Sameit Westbulk*, 514 F.2d 1313, 1316 (1st Cir. 1975).

We repeat: With the issue of uniformity specifically posed by the Court of Appeals, petitions for writ of certio-

rari were filed in *Fonseca, supra,* and in *Alcoa* v. *Perez Rodriguez,* 376 F.2d 35 (1st Cir. 1967), *cert. denied,* 389 U.S. 905 (1967), urging the same arguments as to uniformity, Fifth and Fourteenth Amendments, and conflicts with the Supreme Court's decisions, (Petition No. 709 October Term 1960 and Petition No. 317 October Term 1967), and the Supreme Court declined to intervene, 365 U.S. 860 (1960) in *Fonseca* and 389 U.S. 905 in *Perez Rodriguez.*

There is nothing new in petitioners' petition on the issue of constitutionality.

## Conclusion

For the foregoing reasons, it is respectfully submitted that the Petition for Certiorari to the United States Court of Appeals for the First Circuit should be denied.

Respectfully submitted,

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